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1 REPUBLICAN RIVER COMPACT ARBITRATION
2 BEFORE MR. KARL DREHER, ARBITRATOR

3 RE:)
4 REPUBLICAN RIVER COMPACT)
ARBITRATION)

6 DEPOSITION
7 OF

8 DAVID BARFIELD,
9 taken on behalf of the State of Nebraska,
10 pursuant to Notice of Deposition, beginning at
11 11:00 a.m., on the 13th day of January, 2009,
12 in the office of the Kansas Department of
13 Agriculture, Division of Water Resources, 109
14 Southwest 9th Street, Second Floor, in the City
15 of Topeka, County of Shawnee, and State of
16 Kansas, before Amy L. Simons, Certified
17 Shorthand Reporter.

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1 I N D E X
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3 Certificate----- 121

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7 DAVID BARFIELD
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1 APPEARANCES

2 The State of Nebraska appeared by and
3 through its counsel, Husch Blackwell Sanders
4 LLP, 206 South 13th Street, Suite 1400,
5 Lincoln, Nebraska 68508, by Mr. Tom Wilmoth and
6 Mr. Don Blankenau, and by Mr. Marcus A. Powers,
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7 Assistant Attorney General, Agriculture,
8 Environment and Natural Resources Section, 2115
9 State Capitol, Lincoln, Nebraska 68509.

10 Also present: Mr. James R. Williams,
11 State of Nebraska, Department of Natural
12 Resources.

13 The State of Kansas appeared by and
14 through its counsel, Montgomery & Andrews, 325
15 Paseo De Peralta, Santa Fe, New Mexico 87501,
16 by Mr. John B. Draper, and by Mr. Burke W.
17 Griggs, Kansas Department of Agriculture, 109
18 Southwest 9th Street, Fourth Floor, Topeka,
19 Kansas 66612, and by Mr. Christopher Grunewald,
20 Assistant Attorney General, 120 Southwest 10th
21 Avenue, Second Floor, Topeka, Kansas 66612.

22
23 DAVID BARFIELD,
24 called as a witness on behalf of the State of
25 Nebraska, was sworn, and testified as follows:

4

1 DIRECT EXAMINATION

2 BY MR. WILMOTH:

3 Q. Mr. Barfield, my name is Tom Wilmoth. I'm with
4 the law firm of Husch Blackwell Sanders. I
5 represent the State of Nebraska and I'll be
6 asking a few questions today. I think you know
7 generally the nature of this proceeding, and if
8 you don't understand my questions, feel free to
9 ask again. I think you'll find that the
10 deposition style is a little more low-key than

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11 maybe some of the things you've been used to in
12 the past.

13 A. Okay.

14 Q. And that's certainly how we'll try to approach
15 it. Could you begin just by stating your name
16 for the record and the position that you
17 currently occupy?

18 A. Sure. My name is David Wayne Barfield and my
19 position is Chief Engineer, Division of Water
20 Resources, Kansas Department of Agriculture.

21 Q. And how long have you held that position?

22 A. I've held that position since June of 2007.

23 Q. And what did you do prior to that position?

24 A. Well, I've been an employee of this Division of
25 Water Resources for approximately twenty-five

5

1 years. Immediately preceding the position of
2 Chief Engineer, I've worked for-- I managed the
3 Interstate Water Issues Program.

4 Q. And can you describe the Interstate Water
5 Issues Program?

6 A. The program deals with interstate water
7 matters, principally the Republican River
8 compact issues, the Arkansas River compact
9 issue with Colorado and Missouri River issues.

10 Q. And did you hold any positions prior to that at
11 KDA?

12 A. Yes. Prior to that, for five years, I was head
13 of our Dam Safety Program. And immediately
14 preceding that I spent three years in our

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15 Technical Services Program.
16 Q. And is that all the positions that you've held
17 while you were at KDA?
18 A. Yes.
19 Q. And did you hold any positions prior to that
20 elsewhere?
21 A. Yes. Since graduation, then, I've worked as a
22 consulting engineer in Minnesota for a firm
23 called RCM Consulting for approximately three
24 years, and for approximately three years I was
25 actually a water resource engineer in southern

6

1 Africa.
2 Q. And what is your educational background?
3 A. I have a bachelor's in science and civil
4 engineering from the University of Kansas and a
5 master's of science in water resources
6 engineering also from the University of Kansas.
7 Q. And could you remind me the date that you began
8 as the-- what is it, the manager of the
9 Interstate Water Program?
10 A. Well, I began with the Interstate Water Issues
11 Program in October of 1992. I'm not certain of
12 the date that I became manager of that.
13 Q. That's fine. And what were your typical
14 responsibilities in that regard?
15 A. In regard to the Interstate Water Issues
16 duties?
17 Q. Yes.
18 A. Well, whatever was necessary for that

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19 particular time. Obviously there's been a
20 history of this dispute, and so in the early
21 '90s it was, you know, analyzing data and
22 participating in the routine business of the
23 compact, being a member of the Engineering
24 Committee for Kansas seeking to support our
25 work of trying to resolve that dispute through

7

1 the compact administration.
2 Q. When you say supporting the work, was your
3 support technical in nature?
4 A. Yes.
5 Q. And did that continue even when you became the
6 head of the Interstate Water Issues Program?
7 A. Yeah. Yes. It's been principally leading the
8 technical efforts related to that program's
9 activities.
10 Q. And in the capacity of technical support, did
11 that include modeling or conducting model runs?
12 A. We have a modeler on staff currently, and so
13 I've been involved in directing his work. He's
14 principally done the modeling work. We have a
15 consulting engineer. So there's been a
16 substantial involvement in oversight in the
17 modeling, but others have typically done the
18 actual model runs.
19 Q. And with regard to oversight, do you mean
20 reviewing the model outputs and, if you will,
21 the accounting spreadsheets and that kind of
22 thing?

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23 A. Yes, principally that is-- yeah, reviewing the
24 outputs and the-- making sure they seem
25 consistent with the input data that we provide,

8

1 assisting in the preparation of the data
2 inputs. Yeah, moving the outputs into the
3 accounting spreadsheets and so forth.
4 Q. And do these inputs include information that is
5 provided by Colorado or Nebraska?
6 A. The inputs to the model or the accounting
7 spreadsheets?
8 Q. First the model.
9 A. Yeah, each state is responsible for preparing
10 its model inputs and model data sets. And
11 those are assembled and then ran together
12 either by a third party or, you know, we often
13 will run those as well internally.
14 Q. You mentioned that you have a technical-- I
15 think a technical engineer on staff who runs
16 the models. Who is-- what's the name of that
17 individual?
18 A. Sam Perkins.
19 Q. And you became the Chief Engineer in 2007;
20 that's correct?
21 A. That's correct.
22 Q. And what do your responsibilities with respect
23 to the Republican River include now?
24 A. Well, I am the compact commissioner for Kansas
25 as Chief Engineer.

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1 Q. And do you still engage in any of the model
2 review or spreadsheet review that you did
3 earlier?

4 A. A more limited amount, but yes.

5 Q. When you say you're the compact commissioner
6 under the-- that's under the Republican River
7 Compact, I assume--

8 A. Yes.

9 Q. -- for the record?

10 A. The compact administration, yes.

11 Q. And since-- since what time have you been the
12 compact commissioner for Kansas, when you
13 assumed the post of Chief Engineer?

14 A. That's correct.

15 Q. All right. So when you refer to the term
16 compact commissioner, is that different from
17 the role that the states occupy occasionally on
18 a revolving basis under the compact?

19 A. That's not different.

20 Q. Not different, okay. So in 2005, for example,
21 which state was ultimately responsible for the
22 compact accounting?

23 A. None of the states. I mean, the compact
24 accounting is a jointly developed product.
25 Each state must agree to that accounting.

10

1 Q. Is there a chairperson who assumes ultimate
2 responsibility for that? For ensuring the

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- 3 accuracy - excuse me - of the accounting?
- 4 A. Each state is responsible to ensure the
- 5 accuracy of the overall accounting. There is a
- 6 chair of the administration. There's a chair
- 7 of the Engineering Committee that facilitates
- 8 the work, but I don't believe any state is more
- 9 responsible than the other for the accounting.
- 10 Q. Who was the chair of the administration in
- 11 2005?
- 12 A. I don't recall at the moment.
- 13 Q. Do you know who the chair was in-- of the
- 14 administration in 2006?
- 15 A. I believe it was David Pope, but I'd have to
- 16 look at the records to make sure.
- 17 Q. Do you recall who the chair was in 2007?
- 18 A. That would have been myself.
- 19 Q. And then with regard to the chair of the
- 20 Engineering Committee, is that-- are those the
- 21 same individuals in 2006 and 2007?
- 22 A. Well, the Engineering Committee is typically a
- 23 different person than the compact commissioner.
- 24 Q. So who was the chair of the Engineering
- 25 Committee in 2005, if you recall?

11

- 1 A. I do not recall. I'd have to check the
- 2 records.
- 3 Q. Do you recall who was the chair of the
- 4 Engineering Committee in 2006?
- 5 A. I don't without looking at the records.
- 6 Q. Do you recall 2007, who was the chair?

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- 7 A. Again, I'd have to check the records to be
8 sure.
- 9 Q. So besides yourself, who has involvement within
10 KDA for Republican River matters?
- 11 A. Today?
- 12 Q. Yes.
- 13 A. Well, myself as compact commissioner; Scott
14 Ross is-- of my Stockton field office is also
15 on the Engineering Committee. Sam Perkins,
16 we've already mentioned, is the modeler and has
17 responsibility for preparing those data sets.
18 Chris Batel (spelled phonetically) is on my
19 staff now and will be assisting in the future.
20 Those are the principal people.
- 21 Q. And in 2005 the Chief Engineer was Mr. Pope?
- 22 A. David Pope, yes.
- 23 Q. And you participated in this through the
24 Interstate Water Issues Program; is that
25 correct?

12

- 1 A. That's correct.
- 2 Q. And was Mr. Perkins involved in 2005 as the
3 modeler?
- 4 A. I'm-- I'm not certain. He may not have been on
5 staff at that point.
- 6 Q. Do you know whether an alternative person was
7 involved as a modeler at that time?
- 8 A. We have a consultant who has assisted us
9 throughout the project. He probably assisted
10 at that time. And I'd have to check the

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11 records to know exactly when Sam began and--
12 Q. And who was that consultant?
13 A. Steve Larson.
14 Q. And he was with a firm?
15 A. Yeah, SS Papadopoulos & Associates.
16 Q. Do you have any idea of approximately when
17 their involvement terminated?
18 A. It's still ongoing.
19 Q. It's ongoing. Sorry. Do they assist Mr.
20 Perkins in the modeling analysis?
21 A. They do.
22 Q. And Mr. Batel on your staff, you said he
23 assists you in what capacity?
24 A. Well, he began in December of this last year,
25 so--

13

1 Q. Still getting up-to-speed, then?
2 A. He is-- essentially took my position that I
3 vacated. It just took us a considerable time
4 to get that done.
5 Q. I think you said that Mr. Ross is in your
6 Stockton field office?
7 A. Uh-huh.
8 Q. Is Mr. Ross responsible for basic data
9 collection, water use information, for example?
10 A. He is responsible for the administration of the
11 field office activities, water administration
12 and overseeing the field staff. Our Water Use
13 Program is actually run here in our office.
14 Q. The term water administration sometimes means

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15 different things to different people. When you
16 use that term, do you refer to the act of
17 opening and closing appropriations, or how do
18 you-- how do you use that term?

19 A. Well, it refers to our field activities of
20 ensuring that people comply with their permit
21 conditions and, when necessary, regulating one
22 use so that a senior use can have access to
23 their water supply principally.

24 Q. And does Mr. Ross interact with other water
25 users? For example, the Kansas Bostwick

14

1 Irrigation District?

2 A. Yes.

3 Q. Who is the head of KBID now?

4 A. Kenny Nelson is the manager of the Kansas
5 Bostwick Irrigation District. There's a board
6 of directors as well.

7 Q. And do you know about how long he's held that
8 position?

9 A. I know it's been since 1992. I'm not sure how
10 long before that.

11 Q. Job security. Are there any other irrigation
12 districts in the basin that Mr. Ross interacts
13 with?

14 A. The Almena Irrigation District in Prairie Dog
15 Creek.

16 Q. Besides KBID and-- is it Almena?

17 A. Almena, A-l-m-e-n-a.

18 Q. Are there any other irrigation districts in the

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19 Kansas portion of the basin?
20 A. No.
21 Q. As you know, Mr. Barfield, I think we went
22 through some of your files yesterday, which we
23 appreciate you making available, and I have a
24 few copies of documents that generally came
25 from the files that were made available. We

15

1 attempted to mark just for your reference where
2 we located some of these files. And for the
3 record, I have here what I'd like to mark as
4 Exhibit-- did you mark the deposition notice as
5 A?

6 COURT REPORTER: No.

7 MR. WILMOTH: Okay. Then this will
8 be Exhibit A. One? Okay, Exhibit 1.

9 (THEREUPON, the court reporter marked
10 Barfield Deposition Exhibit No. 1 for
11 identification.)

12 Q. (BY MR. WILMOTH) Could you please identify
13 this document?

14 A. Well, it's titled Figure 1 Schematic Diagram of
15 the Lower Republican River Basin.

16 Q. And what does this schematic represent?

17 A. The lower Republican River basin in its primary
18 features, in particular related to the Nebraska
19 Bostwick and Kansas Bostwick Irrigation
20 Districts.

21 Q. And the Kansas Bostwick Irrigation District, do
22 you know how many acres that contains?

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23 A. Approximately forty thousand.
24 Q. And do you know how many irrigated acres that
25 contains?

16

1 A. I'm sorry, what was the first question?
2 Q. How many acres are included within KBID's
3 boundaries?
4 A. The number that I know is approximately forty
5 thousand irrigated acres.
6 Q. Thank you. And do you know approximately how
7 many of those acres are irrigated by surface
8 water?
9 A. That is the number related to surface water.
10 It does vary. It is reduced in certain years
11 when the supply is reduced.
12 Q. Do you know if any of those users apply
13 groundwater to their acreages?
14 A. I know there are some that have groundwater
15 resources available. I don't know the exact
16 number. It's a limited portion of the
17 district.
18 Q. So there are not wells throughout the
19 district--
20 A. No.
21 Q. -- is that correct? Okay. Do you have any
22 idea how many wells are in the district?
23 A. I don't know that number.
24 Q. Is there someone in the department that might
25 know that number?

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- 1 A. Yes, that number could be queried from our--
2 what we call our WRIS database.
- 3 Q. Does that database contain acreage volumes?
- 4 A. It includes a description of the acres that are
5 authorized from-- under the-- under the water
6 right.
- 7 Q. And when you refer to the term authorized, do
8 you mean irrigated either with surface or
9 groundwater?
- 10 A. Well, with respect to the groundwater rights,
11 then it's the amount that's authorized to be
12 irrigated under that groundwater right.
- 13 Q. Under the groundwater right, thank you. So
14 within KBID, is there-- are there acreages that
15 can be irrigated lawfully with both surface
16 water and groundwater?
- 17 A. Yes.
- 18 Q. And to your knowledge, are there any such
19 acreages that are being irrigated with both
20 surface water and groundwater?
- 21 A. I'm not certain.
- 22 Q. You make-- feel free to correct me if I use
23 this term incorrectly, but I refer to that--
24 the use of groundwater and surface water on the
25 same parcel as commingling. Would you accept

18

- 1 that term for the sake of this discussion?
- 2 A. Sure. That's a term that's used in the
3 modeling. I understand the term. It's not one

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- 4 we use in our vernacular here, but I understand
5 the term.
- 6 Q. I find there's a lot of terms in this business
7 that I don't use in my common vernacular. So
8 if I understand the conclusion of the last few
9 minutes, it is that there is commingling going
10 on within KBID?
- 11 A. Well, there is-- obviously within the Bostwick
12 Irrigation District, there are lands that are
13 authorized for surface water irrigation under
14 the project and there are lands that have
15 groundwater rights for some of those same
16 lands.
- 17 Q. Okay.
- 18 A. I have not examined the records, but I presume
19 there is some lands that are getting both.
- 20 Q. And is it your understanding that if surface
21 water supplies are limited, those landowners
22 within KBID might use groundwater?
- 23 A. They would be authorized-- where they have a
24 water right, they would be authorized to use
25 groundwater under the terms of that water

19

- 1 right.
- 2 Q. If we would like to determine how much
3 groundwater was used in KBID, for example, in a
4 particular year, would we be able to determine
5 that from the WRIS database?
- 6 A. Yes. Every water right holder in Kansas is
7 required to file an annual water use report.

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8 And those are contained within WRIS.

9 Q. Could you, for the record, identify generally
10 on Exhibit 1 where KBID is located?

11 A. You want me to mark it?

12 Q. It's all right with me, unless anyone--

13 MR. BLANKENAU: I would just say let
14 the record reflect that-- just to clarify the
15 record, let the record reflect that Mr.
16 Barfield used-- is it a pencil?

17 A. Yes.

18 MR. BLANKENAU: -- to create a circle
19 on Exhibit 1.

20 A. Thank you. And I'm correcting it here, but
21 anyway-- you know, it includes the-- what is
22 called in this schematic the Kansas Courtland
23 Unit and the Lower Courtland Unit on the
24 schematic.

25 Q. (BY MR. WILMOTH) And it does not-- from your

20

1 drawing, it does not include the main stem of
2 the Republican River below Hardy; is that
3 accurate?

4 A. Actually, there is a unit that's on the far
5 side-- there is a small unit on the east side
6 of the river. What was your question again?

7 Q. Is that small unit on the east side of the
8 river part of KBID?

9 A. Yes.

10 Q. All right. And does that unit receive water
11 from the Courtland Canal?

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- 12 A. Yes. There is a pump unit and a pipe that goes
13 under the river. So it's still getting its
14 supply ultimately through the Courtland Canal.
15 Q. Do both of those units-- let's call them the
16 west and the east. Do both of those share the
17 same priority date?
18 A. Yes.
19 Q. And do you know what the relative distribution
20 of water use is within those units, one to
21 another, the east to the west?
22 A. I don't know. I'm not certain if the east unit
23 is part of the-- the two units of the district
24 are really the upper unit and the lower unit,
25 that above Lovewell and that below Lovewell.

21

- 1 Q. So is it correct that the eastern area on your
2 map is part of the lower division?
3 A. I'm not certain without looking at a different
4 map here.
5 Q. But those collectively constitute approximately
6 forty thousand acres of irrigated ground?
7 A. Correct.
8 Q. Are there any other consumptive uses on the
9 main stem below Hardy?
10 A. Yes.
11 Q. Could you please describe those and identify
12 them on the map?
13 A. I guess maybe I need clarification. You're not
14 talking about associated with KBID now, right?
15 Q. Correct.

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- 16 A. well, they're not shown on this map.
- 17 Q. All right. Can you describe generally what
- 18 those uses are?
- 19 A. well, we have surface water diverters and
- 20 groundwater diverters from Hardy to Milford of
- 21 various descriptions, for irrigation, for
- 22 municipal use, for industrial use.
- 23 Q. And Milford Reservoir is reflected on this
- 24 schematic, is it not?
- 25 A. Yes, it is.

22

- 1 Q. And is Milford Reservoir within the Republican
- 2 River Basin?
- 3 A. It is.
- 4 Q. And by that, I mean as described in the
- 5 compact.
- 6 A. I believe the compact describes the basin as
- 7 going to its confluence with the Smoky Hill,
- 8 which would include Milford.
- 9 Q. So between Hardy and Milford Reservoir, if I
- 10 understood you, there are some additional
- 11 consumptive uses?
- 12 A. That's correct.
- 13 Q. And some of those are surface water?
- 14 A. Yes.
- 15 Q. And are those irrigation uses?
- 16 A. They include irrigation uses and other uses.
- 17 Q. Would that include municipal uses?
- 18 A. There are municipal uses. I'd have to check
- 19 the records to know whether their source is

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20 surface water or groundwater or some of both.
21 Q. Do you have any idea approximately how much
22 additional irrigated acreage is in that region?
23 A. I'm not certain. There are records that would
24 show--
25 Q. So if-- I'm sorry, I didn't mean to talk over

23

1 you. That might be something we could identify
2 through the WRIS?
3 A. W-R-I-S or WRIS is the acronym we speak of.
4 Yeah, WRIS would have all of those water rights
5 and their associated attributes included.
6 Q. Excellent. I'd like to hand you what we'll
7 mark as Exhibit 2 to the deposition, which is
8 an electronic communication from 2004.
9 (THEREUPON, the court reporter marked
10 Barfield Deposition Exhibit No. 2 for
11 identification.)
12 Q. (BY MR. WILMOTH) After you've had a moment to
13 just peek at that, I'd ask you if you recall
14 this communication?
15 A. Yes, I recall this.
16 Q. This appears to be a communication to the
17 Bureau of Reclamation; is that correct?
18 A. That is correct.
19 Q. Am I correct in inferring from this
20 communication that Kansas and the Bureau were
21 conducting an appraisal study to determine
22 potential alternative uses in the Lower
23 Republican Basin?

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24 A. Yes, the Bureau, State of Kansas and the State
25 of Nebraska were involved in this study.

24

1 Q. Is one of the issues that's addressed in this
2 communication the use of additional water from
3 Lovewell Reservoir?

4 A. Yes.

5 Q. What happened with this study?

6 A. There is a report that was produced by the
7 Bureau of Reclamation that summarized the
8 results of the study.

9 Q. Do you know generally what those results were?

10 A. I've seen the report, yes.

11 Q. And what were the general conclusions?

12 A. Well, it reviewed potential uses of water. It
13 reviewed a number of alternatives in Nebraska,
14 potential reservoir sites to store surplus
15 waters in certain periods of time and make use
16 of it. It looked at Lovewell Reservoir and
17 perhaps expanding storage there and other
18 alternative storage locations in Kansas.

19 Q. And am I correct in inferring that this
20 communication explains an additional water
21 right could be issued to KBID for the expanded
22 use of Lovewell?

23 A. Well, it describes the current KBID water
24 rights. It describes generally the process of
25 requiring a new water right for any water user

25

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- 1 in the basin. I don't see that it's specific
2 to KBID in that case, but just generally.
- 3 Q. On the second page of this communication there
4 are four criteria, if you will. Are those the
5 criteria you're referring to that apply to any
6 new appropriation in the basin?
- 7 A. Yes.
- 8 Q. One of those criteria, number four, talks about
9 the Milford water right-- or water reservation
10 right, and that issue is addressed further at
11 the bottom of this memorandum. Can you
12 describe the nature of that right?
- 13 A. Well, it's, you know, described in the document
14 we're viewing together. The State of Kansas
15 through the Water Office made application and
16 it was approved to store water in Milford
17 Reservoir and utilize that for certain
18 purposes. That water right has a priority date
19 of April 3, 1974.
- 20 Q. Has that water right been exercised?
- 21 A. What do you mean by exercised?
- 22 Q. Has anyone ever utilized that water for its
23 intended purpose?
- 24 A. Certainly.
- 25 Q. And who utilizes that water?

26

- 1 A. The Kansas Water Office is sort of the-- I'm
2 not sure of the exact term to use, but the--
3 the holder of the water right on behalf of the

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4 State of Kansas. They contract with others to
5 utilize that storage. The Kansas Water Office
6 would have, you know, all the records about all
7 those uses. I know of two of them. They may
8 not be all of them. One of them relates to the
9 Kansas River Water Assurance District, which is
10 an entity created under Kansas state law that
11 allows for the acquisition of storage to be
12 utilized to ensure that the municipalities and
13 industries within the district have a
14 dependable water supply.

15 Q. And there was, I believe, one other? You said
16 you're aware of two?

17 A. The other one that I'm aware of is Westar, I
18 believe, which is an energy utility, has some
19 storage space that they have contracted with
20 the water office for, to provide water for that
21 utility.

22 Q. And where is that water utilized for Westar?

23 A. At the Jeffrey Energy Center.

24 Q. Is that within the Republican River Basin?

25 A. It is not.

27

1 Q. What about the Kansas River Water Assurance
2 District?

3 A. Yes, it is not in the Republican River.

4 Q. But they utilize this water also?

5 A. That's correct.

6 Q. Could you describe any other uses of Milford
7 Reservoir?

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- 8 A. well, as I said, there may be other contracting
9 entities. I just don't have that information
10 in front of me. Obviously it is used for
11 recreational purposes as well. Milford is used
12 for flood control purposes. On occasion it is
13 used by the Corps of Engineers for navigation
14 support to Missouri River navigation.
- 15 Q. So the Corps operates Milford generally?
- 16 A. Yes, it's a Corps of Engineers reservoir.
- 17 Q. Do you have any agreements with the Corps of
18 Engineers about how these-- how the Milford
19 water reservation right will be addressed?
- 20 A. Yes. The State of Kansas you're talking about?
- 21 Q. Correct.
- 22 A. Again, the Kansas Water Office is the sort of
23 contracting entity, so they're sort of the
24 keeper of those documents. I'm sure there are
25 copies in our records as well, but the complete

28

- 1 information would be with them.
- 2 Q. With the Kansas Water Office?
- 3 A. Kansas Water Office, yes.
- 4 Q. With regard to the recreation purposes at
5 Milford, are you referring to fishing or is
6 there boating on Milford?
- 7 A. I'm not certain. I presume there are both.
- 8 Q. Do you have any idea what the annual receipts
9 are for recreation at that facility?
- 10 A. I don't know.
- 11 Q. Would the-- do you know if those receipts would

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12 come to Kansas or would they go to the Corps of
13 Engineers?
14 A. I'm not certain.
15 Q. With regard to the two uses that you mentioned,
16 the Kansas River Water Assurance District and
17 Westar, do you know whether those entities are
18 paying compensation for the use of that water?
19 A. Yes, they are.
20 Q. Do you know the amount of that compensation,
21 say on an acre foot basis?
22 A. No, I do not know.
23 Q. Do you know how often they have taken water
24 under that right?
25 A. No.

29

1 Q. But they have done so at least once?
2 A. Yes.
3 Q. I'd like to show you what would be Exhibit No.
4 3.
5 (THEREUPON, the court reporter marked
6 Barfield Deposition Exhibit No. 3 for
7 identification.)
8 A. These are copies of these documents, not the
9 originals?
10 Q. (BY MR. WILMOTH) No, those are the originals.
11 A. Oh, these are the originals? Okay.
12 MR. WILMOTH: But like I say, the--
13 MR. DRAPER: Just for our purposes.
14 MR. WILMOTH: Those notes have no
15 purposes other than to assist Mr. Barfield.

16 BARF113T.txt
 MR. DRAPER: Thank you.

17 Q. (BY MR. WILMOTH) Could you please identify the
18 document that I believe is marked as Exhibit 3?
19 MR. DRAPER: Do you have an extra
20 copy?
21 MR. WILMOTH: I'm sorry, I do.

22 A. well, it is a draft memorandum to myself from
23 Dale Book of Spronk Water Engineers, and its
24 subject is Republican River Compact; update of
25 Nebraska irrigated area.

30

1 Q. (BY MR. WILMOTH) And first of all, could you
2 identify Dale Book, please?
3 A. Dale Book is president of Spronk Water
4 Engineers and consultant for the State of
5 Kansas.
6 Q. Is he currently retained by Kansas?
7 A. Yes.
8 Q. Is he retained to work on the Republican River?
9 A. Yes.
10 Q. And I infer from the name of the company he's
11 an engineer?
12 A. Yes.
13 Q. Can you tell me generally what he does for the
14 State of Kansas, unless that information is
15 privileged?
16 A. He is an engineering consultant related to
17 interstate water matters.
18 Q. And he has been working with the State of
19 Kansas since when?

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- 20 A. Well, the Division has contracted with him
21 since the mid 1990s. He's had a longer-- he
22 was-- he's been a consultant on the Arkansas
23 River Compact prior to that.
- 24 Q. This memorandum discusses, as I understand it,
25 reviewing and digitizing various irrigated

31

- 1 lands in the State of Nebraska; is that an
2 accurate description?
- 3 A. Yeah, it's a proposal identifying a potential
4 methodology for updating estimates of Nebraska
5 irrigated area.
- 6 Q. Was this ever done?
- 7 A. I'm not certain.
- 8 Q. Do you know whether--
- 9 A. I'm-- go ahead.
- 10 Q. Do you know whether the State of Kansas engaged
11 in any GIS activity like this?
- 12 A. I don't believe this activity was-- was done.
13 I think some more limited drive-through sort of
14 surveys in parts of the basin had been done.
- 15 Q. Just to make sure I'm asking a clear question,
16 my question is, does Kansas currently possess
17 any GIS data concerning Nebraska irrigated
18 lands?
- 19 A. Yes.
- 20 Q. Is that information available to the public?
- 21 A. I'm not certain. It's not something we've made
22 available to the public, so--
- 23 Q. I believe that we, the State of Nebraska,

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24 requested, to the extent that information
25 existed, it be made available through

32

1 discovery. You may not be aware of that
2 request, but just for the record, I would like
3 to reiterate that request.

4 A. Okay.

5 Q. Mr. Barfield, are you familiar with a water
6 right called a minimum desirable stream flow?

7 A. I am familiar with a minimum desirable stream
8 flow. It's not technically a water right.

9 Q. Could you describe what a minimum desirable
10 stream flow is in Kansas?

11 A. Sure. Kansas statutes, part of the water
12 Appropriation Act are specific provisions that
13 were passed in the 1980s that allowed for
14 minimum desirable stream flows to be designated
15 on specific Kansas streams at specific
16 locations and for them to have a priority date
17 of a date in 1984. And that all water rights
18 subsequent to that date would be conditioned
19 with respect to those minimum desirable stream
20 flows.

21 Q. I'm sorry, all water rights subsequent to that
22 date? Is that what you said?

23 A. Yes.

24 Q. And when you say conditioned, does that mean
25 that those subsequent rights may be limited

33

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- 1 based on the MDS?
- 2 A. That's right. When the minimum desirable
- 3 stream flow is not met at a gauging station
- 4 below that right, it could be-- its use could
- 5 be curtailed to satisfy that MDS.
- 6 Q. But that would not apply to any rights prior to
- 7 1984?
- 8 A. That's correct.
- 9 Q. Have rights-- since 1984, have rights been
- 10 curtailed based on the MDS?
- 11 A. Yes.
- 12 Q. Is that a common occurrence? Does it occur
- 13 every year?
- 14 A. No.
- 15 Q. Do you have any idea in the last twenty-five
- 16 years how often that has occurred?
- 17 A. In the Republican River Basin?
- 18 Q. Yes.
- 19 A. We have administered for MDS in the Republican
- 20 Basin in the year 2000 and the years 2002 to
- 21 2007.
- 22 Q. All five years in that period?
- 23 A. Yes, as well as-- I'd have to go back and
- 24 review the records, but some in the early 1990s
- 25 as well.

34

- 1 Q. Do you have any idea how many irrigated acres
- 2 were precluded-- strike that. Let me try to be
- 3 a little more clear. Do you have any idea how
- 4 many individuals were precluded from irrigating

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- 5 due to that administration?
- 6 A. I would need to review the records. There are
- 7 approximately 150 water rights that are
- 8 affected by our MDS administration in the
- 9 Republican.
- 10 Q. Are those largely irrigation rights?
- 11 A. Largely, but not exclusively.
- 12 Q. Do you have any sense of how much acreage is
- 13 involved?
- 14 A. I'd have to review the records.
- 15 Q. Can I infer from your earlier comments that
- 16 that's the kind of information we could
- 17 identify from the WRIS?
- 18 A. Yes.
- 19 Q. Are any of these rights in KBID?
- 20 A. Well, the KBID right is obviously very senior.
- 21 Some of the individual water rights within the
- 22 district might be. Again, we would merely have
- 23 to look at the priority date associated with
- 24 those particular rights.
- 25 Q. Are there a number of additional rights in KBID

35

- 1 beyond the-- what I would call the primary
- 2 right from the 1940s?
- 3 A. Say that again.
- 4 Q. If you look back at exhibit-- if you look back
- 5 here at Exhibit 2, I think you referred to a--
- 6 I thought your term was the primary rights, but
- 7 you refer, I think, to two rights.
- 8 A. Well, KBID has two water rights; one is to

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9 divert water from the Republican River main
10 stem. That is file number 385. And its second
11 water right is on White Rock Creek, which is
12 where Lovewell Reservoir-- what it impounds for
13 allowing the storage and then subsequent use of
14 White Rock Creek water.

15 Q. So getting back to these rights that are
16 post-1984.

17 A. Uh-huh.

18 Q. If an individual within KBID had such a right,
19 I'm inferring that that would not be a KBID
20 right; it would be a right for that individual?

21 A. That is correct.

22 Q. All right, thank you.

23 A. Yeah, I was speaking of individual rights
24 within the KBID district.

25 Q. I understand, thank you. Can you please

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1 roughly mark on Exhibit 1 where this MDS
2 applies?

3 MR. BLANKENAU: Can you do that with
4 a red pen this time?

5 A. well, I can describe it. I mean, any water
6 right above Clay Center. There are two MDS
7 designated gauging stations within the
8 Republican River. One is at Clay Center, so
9 the reach from Clay Center to Concordia is one
10 reach that is administered. And then there is
11 also an MDS station designated or MDS values
12 designated at Concordia, so that reach is

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13 administered. They can be administered
14 together. They can be administered separately.
15 But, in essence, every water right above Clay
16 Center can be-- that has been issued subsequent
17 to 1984 would have a condition on it.

18 Q. (BY MR. WILMOTH) Would that apply to
19 groundwater rights?

20 A. It does.

21 Q. It does. One last question on that issue. The
22 MDS-- how do-- would you describe that as a
23 flow requirement? How is it defined, if I may?

24 A. Well, it stands for Minimum Desirable Stream
25 flow. There are monthly values associated with

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1 each of the specified gauging stations. And
2 when the flow values are below that for seven
3 consecutive days, we're required to take
4 certain actions--

5 Q. So do the--

6 A. -- against those-- those that are junior to
7 that right.

8 Q. The roughly 150?

9 A. Yes.

10 Q. So those volumes vary by month?

11 A. The-- yeah, the flow values, yes.

12 Q. The flow value?

13 A. CFS, flow rates.

14 Q. Generally speaking, are they higher in the
15 summer or lower in the summer than in the
16 winter?

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- 17 A. I'd have to look at the values.
18 Q. Do you have any idea how many wells have been
19 installed in Kansas since 2002 in the
20 Republican River Basin?
21 A. I don't know with certainty. Again, we can
22 query that out of the database. It's a pretty
23 limited number, I believe.
24 Q. Less than one thousand?
25 A. Substantially less. What was the geographic

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- 1 extent of your question?
2 Q. The Republican River Basin in Kansas.
3 A. Both this area plus Northwest Kansas?
4 Q. Yes, Northwest Kansas also.
5 A. It's a very limited number. All of Northwest
6 Kansas-- much of Northwest Kansas is either
7 closed to new appropriations or has very
8 restrictive policies and that is also
9 applicable to this particular reach below the
10 state line.
11 Q. And I believe you said in Northwest Kansas the
12 primary irrigation district is Alma; is that
13 correct?
14 A. Yes.
15 Q. That's the only irrigation--
16 A. That's the only organized irrigation district
17 in Northwest Kansas-- in the Republican basin
18 of Northwest Kansas.
19 Q. Do you know approximately how many acres are
20 irrigated in that district?

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21 A. I would need to review the records.
22 Q. Is it larger or smaller than KBID?
23 A. It's smaller.
24 Q. And do you know whether water is commingled in
25 Almena Irrigation District?

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1 A. It is commingled.
2 Q. And again, for the record, that means both
3 groundwater and surface water can be applied on
4 the same irrigated ground?
5 A. That's correct.
6 Q. I think I asked you with regard to KBID how
7 many acres received groundwater. Same question
8 with Almena. Do you have any idea how many
9 acres receive groundwater?
10 A. We would-- I'd have to review the--
11 Q. Query the--
12 A. We'd have to query the records.
13 Q. Query the WRIS?
14 A. Right.
15 Q. And who is the person responsible for managing
16 Almena?
17 A. I don't have that name on--
18 Q. Is there a director?
19 A. There will be a person that's the manager of
20 the district.
21 Q. Is that position unfilled, or you just don't--
22 A. I don't know who it is right now.
23 Q. Do you have any idea what the total consumptive
24 use of water is in Kansas in the Republican

BARF113T.txt

25 Basin, both Northwest Kansas and below?

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1 A. I don't have that number on top of my head.

2 Q. Is that a number that could be obtained from
3 the WRIS?

4 A. Yes.

5 Q. Can you describe the distribution facilities in
6 Alma?

7 A. Well, there is a reservoir obviously, Norton
8 Reservoir, that is the source of water. Water
9 is released actually to the river and there is
10 a diversion structure downstream a number of
11 miles where the water is diverted into the
12 major canal which parallels the river and has
13 laterals that supply the irrigation district.

14 Q. Do you know what the diversion capacity is at
15 that location?

16 A. I don't have that on top of my head. There is
17 also-- the City of Norton municipal supply is
18 also done from Norton Reservoir and I believe
19 comes straight out of the reservoir.

20 Q. I would like to hand you what I believe is
21 Exhibit 4.

22 (THEREUPON, the court reporter marked
23 Barfield Deposition Exhibit No. 4 for
24 identification.)

25 Q. (BY MR. WILMOTH) Have you seen this document?

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- 1 A. I'm not certain that I've seen it.
- 2 Q. This document seems to be discussing a purchase
- 3 of water. I would direct you to the last
- 4 paragraph on page 2.
- 5 A. Okay.
- 6 Q. Understanding that you may not have seen this,
- 7 are you familiar with the concept being
- 8 discussed there?
- 9 A. Yes.
- 10 Q. Could you describe that?
- 11 A. Well, the content is related to the potential
- 12 for a lease by the State of Kansas to establish
- 13 a minimum pool in Norton Reservoir.
- 14 Q. Do you know if that lease was executed?
- 15 A. Yes. There have-- there has been a lease.
- 16 whether the exact terms match this letter or
- 17 not, I'm not certain. This was part of a
- 18 negotiation that occurred, but there has been
- 19 leases between the State of Kansas, the
- 20 Department of wildlife and Parks and Almena
- 21 District executed.
- 22 Q. And what is the purpose of those leases?
- 23 A. It again is-- as the letter states, is to
- 24 establish a minimum pool in the reservoir for
- 25 fisheries, recreation purposes.

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- 1 Q. Those are non consumptive uses?
- 2 A. Other than evaporation, yes.
- 3 Q. Do you have any idea how much water that
- 4 involves?

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- 5 A. In what way are you asking? What measure?
- 6 Q. Acre feet.
- 7 A. Of evaporative consumption or storage or--
- 8 Q. If I understood you correctly, the lease is to
- 9 essentially eliminate certain water uses?
- 10 A. It restricts the district from calling water
- 11 that otherwise would be able to call to keep
- 12 water-- a certain minimum amount of water in
- 13 the reservoir to keep fisheries viable, for
- 14 example.
- 15 Q. And do you know what that minimum volume is?
- 16 A. It's related to a specific elevation in the
- 17 reservoir that's stated here, elevation 2290.
- 18 There is a storage capacity table that would
- 19 tell you the difference between that and where
- 20 the district, you know, could take water.
- 21 Q. And is it fair to say that when the lease is
- 22 exercised or the payment is made under the
- 23 lease, that the State through the Department of
- 24 Wildlife and Parks essentially stands in the
- 25 shoes of Almena?

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- 1 A. Ask that question again.
- 2 Q. Is the purpose of that lease to preclude Almena
- 3 from making a call on that water, and does that
- 4 under Kansas law vest the Department with some
- 5 kind of right to that water?
- 6 A. Yeah, the Almena District may continue to take
- 7 water when it's above the elevation but is, by
- 8 the lease's terms, restricted from calling for

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- 9 water when it's below that elevation.
- 10 Q. And does the Department of wildlife have a
- 11 water right for that under state law?
- 12 A. No.
- 13 Q. Purely-- it's a purely contractual arrangement?
- 14 A. It's a contractual arrangement, yes.
- 15 Q. Do you have any idea what the duration of that
- 16 agreement is?
- 17 A. I believe it's a ten-year lease at this point.
- 18 There were some individual year leases
- 19 originally that I think is probably the subject
- 20 of this letter or some shorter term. And I
- 21 believe a lease of a longer duration has
- 22 subsequently been negotiated and that we're in
- 23 right now.
- 24 Q. Do you know if it's currently in effect now?
- 25 A. It is in effect now.

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- 1 Q. Do you know if it was in effect in 2005?
- 2 A. I'm not certain.
- 3 Q. Do you know if it was in effect in 2006 or
- 4 2007?
- 5 A. Again, I'd have to check the records to be
- 6 certain.
- 7 Q. (BY MR. BLANKENAU) David, you had mentioned
- 8 that the northwest portion of Kansas is closed
- 9 to new appropriations; is that correct?
- 10 A. I said it was largely-- it's closed to new
- 11 appropriations through much of it or highly
- 12 restrictive.

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- 13 Q. Under what circumstances is an area in Kansas
14 closed to new appropriations?
15 A. Well, currently the area is closed by
16 designation through administrative regulations.
17 Q. Is that through your office?
18 A. Yes.
19 Q. And on what basis do you make that declaration?
20 A. I guess I'm not clear. Are you asking how the
21 decision is made?
22 Q. Yes. What-- what goes into your decision to
23 close an area to further appropriations?
24 A. Right. Well, in terms of new appropriations,
25 fundamentally the State of Kansas operates on

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- 1 determining whether a new use is sustainable or
2 within what we call the safe yield. And so--
3 and that's based on an evaluation as the-- of
4 the current appropriations in an area versus
5 the available recharge.
6 Q. And is it a constitutional standard or a state
7 statute or just a policy?
8 A. There's a statutory basis in implementing
9 administrative regulations.
10 Q. And this-- do your rules and regulations then
11 specify all of the details that you consider in
12 reaching that decision?
13 A. Well, those designations are essentially--
14 specific geographic areas are designated as
15 closed or, in the case of Prairie Dog, Beaver
16 and Sample Creek, the administrative

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17 regulations closed those areas. In the case of
18 South Fork, it is a highly restricted area.
19 The rules designate the procedure for
20 determining whether additional water is
21 available at a specific location within that
22 basin. Did that answer your question?
23 Q. Yes, that's helpful, thank you. Are there
24 other areas in Kansas that are also closed to
25 further appropriations or are highly

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1 restricted?
2 A. Yeah, much of western Kansas is either closed
3 or highly restricted.
4 Q. We've spoken a lot about the WRIS resource that
5 you have available online. Who's knowledgeable
6 about how searches can be conducted on that
7 system?
8 A. Well, the most knowledgeable staff member would
9 be Jim Bagley.
10 Q. And Mr. Bagley had previously also had some
11 connection to the Republican River Basin, had
12 he not?
13 A. Many years ago he, I believe, served on the
14 Engineering Committee. It's been since--
15 sometime prior to the mid 1990s.
16 Q. With respect to how water rights are
17 administered, Kansas is a prior appropriations
18 state, is it not?
19 A. It is.
20 Q. And are groundwater rights fully within that

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21 prior appropriation doctrine as well?
22 A. They are-- surface water, groundwater are
23 administered within the same priority system
24 provided for under the Kansas Water
25 Appropriation Act.

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1 Q. So when the State of Kansas then administers
2 for a senior right, you would treat anyone with
3 a groundwater well the same as someone with an
4 identical priority date in terms of surface
5 water diverter, or are there some
6 considerations or differences there?
7 A. There are considerations for the differences in
8 some cases.
9 Q. And what would those be?
10 A. Well, we have-- there are times when
11 administering a groundwater right at some
12 distance might be a futile call against MDS,
13 for example. So, you know, administration is
14 often different of groundwater than surface
15 water in terms of meeting the real time needs
16 of a senior surface water right. If
17 administering a junior right some distance away
18 will not provide water to that senior right, it
19 might not be administered in the same way as a
20 surface water right, recognizing those
21 realities. But in other cases, they are, if--
22 depending on the timing of the impact and so
23 forth.
24 Q. And does the State of Kansas regularly close

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25 down individual groundwater users on-- for a

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1 priority call?

2 A. Well, we do.

3 Q. Does that occur on an annual basis, semiannual?

4 A. Well, again, an illustration of that would be
5 MDS regulation on the main stem of the
6 Republican River. It was administered against
7 the groundwater users as well as surface water
8 users.

9 Q. And groundwater users were then turned off in
10 the same year that you earlier identified?

11 A. Yes.

12 Q. Your predecessor, David Pope, is he a
13 consultant in this matter as well?

14 A. He is a consultant, yes.

15 Q. But he's-- other than his contractual
16 relationship with the State of Kansas, he's no
17 longer a state employee as such; is that
18 correct?

19 A. Yes, that's correct.

20 Q. (BY MR. WILMOTH) Mr. Barfield, I'd like to
21 hand you Exhibit 5.

22 (THEREUPON, the court reporter marked
23 Barfield Deposition Exhibit No. 5 for
24 identification.)

25 Q. (BY MR. WILMOTH) Could you please give this a

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1 look and tell me if you are familiar with this
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- 2 document?
- 3 A. I don't recall seeing this document before, no.
- 4 Q. Could you give a quick read to the first
- 5 paragraph on page one and tell me if you're
- 6 familiar with the concept discussed here?
- 7 A. Okay, what was your question?
- 8 Q. Are you familiar with a proposed water bank in
- 9 the Almena area?
- 10 A. Yes.
- 11 Q. Could you describe the nature of that bank?
- 12 A. Well, no bank has been established as-- as
- 13 discussed on the Prairie Dog Creek, but Kansas
- 14 law has a provision for two water banks, one
- 15 being groundwater only and another one being
- 16 surface water and groundwater. Sort of pilot--
- 17 piloting the concepts of water banks in Kansas.
- 18 Q. Is this an option under state law, but it has
- 19 not been implemented? Is that what you were
- 20 saying?
- 21 A. It is provided for by state law, but it has not
- 22 been implemented in the Prairie Dog Creek.
- 23 Q. Are they geographically limited under law?
- 24 A. No, they're not limited to a certain part of
- 25 the area, but the statute only currently allows

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- 1 for two banks of the two types I just
- 2 mentioned.
- 3 Q. Somewhere in the state?
- 4 A. Somewhere in the state.
- 5 Q. But not limited to the Republican River Basin,

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- 6 for example?
- 7 A. No, it's not geographically designated.
- 8 Q. And what's the general concept behind water
- 9 banks?
- 10 A. Well, it allows for a process where a bank is
- 11 created and certain conditions under which
- 12 water right owners can deposit unused water in
- 13 a bank and subsequently that water can be sold
- 14 to another person or entity.
- 15 Q. For a profit?
- 16 A. Yeah, there's money exchanged in such banks.
- 17 Q. Is this designed to deal with any kind of
- 18 hydrologic problem such as groundwater
- 19 depletion, or is this a marketing mechanism?
- 20 A. It's a marketing mechanism. There is a
- 21 conservation component that is required in
- 22 those exchanges. So it allows for more
- 23 flexibility in administration but requires some
- 24 degree of conservation to be included.
- 25 Q. Under the current administration, are there any

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- 1 mechanisms comparable to that in the Republican
- 2 River Basin for the transfer of water?
- 3 A. Not to my knowledge.
- 4 Q. Is water transferred in the Republican River
- 5 Basin to your knowledge from one user to
- 6 another?
- 7 A. Not to my knowledge. Other than, you know, we
- 8 spoke about the Almena. I suppose that's a
- 9 transfer of sorts.

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10 Q. Anyone have dry year options that you're aware
11 of, for example? You're familiar with that
12 term?

13 A. Yes, I'm familiar with the term, and I do not
14 know of any in the Republican River Basin.

15 Q. I believe you said earlier that there are
16 municipalities in the Republican River Basin
17 that withdraw water from the reservoir?

18 A. Yes.

19 Q. Do you have any idea what they charge for that
20 water, their consumers?

21 A. No.

22 Q. Could you give me an example of one?

23 A. The City of Concordia.

24 Q. Thank you. Are there any major industrial
25 users in the basin?

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1 A. How do you define major?

2 Q. How about-- let's say anyone that uses over 500
3 acre feet a year.

4 A. Again, WRIS would be determinative. I believe
5 there's an ethanol plant in the Republican
6 River Basin that would probably meet that
7 criteria.

8 Q. And if we were interested in learning the
9 priority dates of these users, we could find
10 that on the WRIS?

11 A. WRIS would have the priority date, would have
12 the authorized quantities, the authorized
13 diversion rate.

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14 MR. WILMOTH: Okay. Do you want to
15 break here, John?

16 MR. DRAPER: Yeah, it's probably a
17 good point.

18 (THEREUPON, a recess for lunch was
19 taken.)

20 MR. DRAPER: If I may, I checked over
21 the break, and you mentioned something earlier
22 about GIS information concerning Nebraska
23 acreage in the basin and we don't understand
24 you to have asked us for anything like that.
25 And, you know, it was just the Kansas portion

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1 of the basin, so we haven't investigated
2 anything like that.

3 MR. WILMOTH: Okay, fair enough. I
4 don't know what-- I'll have to look at that
5 discovery request again, how broad it was, but
6 if that's your interpretation--

7 MR. DRAPER: And then I think Dave
8 had one follow-up that--

9 MR. WILMOTH: Oh, clarification?

10 A. You asked something to the effect whether the
11 total consumptive use of water in Kansas
12 including Northwest Kansas could be obtained
13 from WRIS, and WRIS contains diversion data and
14 we also have system type data. It isn't
15 consumptive use, per se. So I just wanted to
16 make that clear. I don't-- if that changes
17 your question or any follow-up, then fine. But

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- 18 we don't-- it's not the consumptive use that is
19 the records; it's the diversion amount in this.
20 Q. (BY MR. WILMOTH) My only follow-up would be,
21 do you have estimates of consumptive use in the
22 basin?
23 A. Well, for the compact administration purposes,
24 we calculate-- actually, let me think a minute
25 here. It isn't strictly consumptive use, but

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- 1 we estimate the portion that is not return flow
2 through an assumed values of return flows by
3 system type.
4 Q. Do you have any idea, for example, how much
5 that was in 2007?
6 A. The return flows?
7 Q. The consumptive use based on your analysis.
8 A. Well, those calculations have been provided to
9 the State of Nebraska by the Engineering
10 Committee, the estimates that we have made with
11 respect to diversions and return flows.
12 MR. BLANKENAU: Just a point of
13 clarification, this is just upstream of Guide
14 Rock; is that correct?
15 A. Upstream of Hardy.
16 MR. BLANKENAU: Of Hardy. So there
17 would be nothing with respect to consumptive
18 use in Kansas below the state line?
19 A. Yeah, that's correct.
20 Q. (BY MR. WILMOTH) For further clarification,
21 nothing in Kansas's possession or nothing

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22 provided to the Engineering Committee?
23 A. Well, nothing provided to the Engineering
24 Committee other than there are calculations
25 done with respect to the Kansas Bostwick

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1 Irrigation District because it's using water
2 from the main stem. We have the same
3 information available with respect to diversion
4 amounts and system types below. I can't think
5 of any sort of calculations we've done with
6 that data.

7 Q. Mr. Barfield, I'll hand you what will be marked
8 Exhibit 6, a letter which I'm sure you're
9 familiar with, dated December 19, 2007.

10 (THEREUPON, the court reporter marked
11 Barfield Deposition Exhibit No. 6 for
12 identification.)

13 Q. (BY MR. WILMOTH) Could you take a moment and
14 acquaint yourself with that and let me know if
15 you're the author of that letter?

16 A. Yes, I'm the author of this letter.

17 Q. And just for the record, could you give us an
18 overview of this letter?

19 A. Well, it is a letter dated December 19, 2007,
20 from myself to Ann Bleed, and its subject is
21 Remedy for Nebraska Violation of the Decree in
22 Kansas v. Nebraska and Colorado.

23 Q. And does this letter include any requests or
24 demands of the State of Nebraska?

25 A. It does. It requests certain actions by the
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1 State of Nebraska to get in compliance with its
2 allocations and requests damages for past
3 violations basically.

4 Q. And with regard to the damages request, I would
5 direct your attention to page 2. In the second
6 full paragraph there's a reference to Kansas
7 damages. I'd let you read it rather than
8 myself, but I'm referring to the numbered--

9 A. Number two, yes.

10 Q. Could you just read that number two for the
11 record?

12 A. Sure. "The remedy includes: (2), Kansas
13 damages for the years 2005-2006 or Nebraska's
14 gains, whichever are greater, plus compounded
15 interest and attorney's fees and costs together
16 with any additional relief that may be
17 considered appropriate by the Court."

18 Q. And are you familiar with Arbitrator Karl
19 Dreher's award of-- preliminary decision - let
20 me clarify for the record - of December 10
21 explaining that, for our current purposes, the
22 damages calculation would be based on Kansas's
23 losses?

24 A. I understand that was his preliminary decision.

25 Q. I'm not asking you to accept that analysis, but

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1 for purposes of my next question, please do.

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2 Your reference to Kansas's losses, what exactly
3 did that mean?

4 A. Our focus in this letter was on what we
5 requested, so I'm not sure we've fully defined
6 that. At least, I have not been involved in
7 fully defining what those losses are. So I
8 could give you some of what likely is included
9 in that.

10 Q. That would be helpful. Please do.

11 A. Obviously the Kansas Bostwick Irrigation
12 District was denied waters that we were
13 entitled to and--

14 Q. Was that in both '05 and '06?

15 A. Yes. And so losses certainly would include,
16 you know, the direct and indirect effects of
17 not having that water.

18 Q. With regard to indirect effects, what do you
19 mean by that?

20 A. It's a term that the economists use and I think
21 it's better for them to define all of that, but
22 obviously we have producers that don't-- don't
23 have as much profit. We have, you know, people
24 that sell seed and fertilizer to those people,
25 and all sorts of things of that nature, I'm

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1 sure, are included.

2 Q. So these are regional impacts, not direct
3 impacts on the water user?

4 A. They would include that, yes. You know, we had
5 other users in the main stem, senior water

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- 6 rights and others that did not have enough
7 water. The flows during this period were
8 extremely low.
- 9 Q. When you refer to senior users, are you using
10 that term relative to KBID?
- 11 A. No, really to MDS, but there were water rights
12 that should have had water that didn't. And
13 all of--
- 14 Q. Would that be, for example, the ethanol plant
15 that you mentioned earlier?
- 16 A. No, that would not include the ethanol plant.
17 It was junior. It's a fairly new development.
- 18 Q. Junior to the MDS?
- 19 A. Yes. But again, there are a number of users of
20 the Republican River water and those flows were
21 at historic low levels that were not able to
22 fully satisfy their rights and I believe should
23 have been able to.
- 24 Q. And do you know if any of those users had any
25 alternative supplies available to them such as

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- 1 groundwater or--
- 2 A. Some may have and some may not have. I know
3 some of them are surface water users not too
4 far from the state line, for example. Again,
5 we have not-- I have not participated in any
6 analysis of that population to date.
- 7 Q. Who's conducting that analysis?
- 8 A. We have experts that are involved in that. I
9 guess our-- you'll have reports at the

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10 appropriate time.
11 Q. Okay. Can we name those experts or is that
12 privileged? Just names.
13 MR. DRAPER: Well, we'd be glad to
14 share some, in a mutual way, information about
15 experts. Of course, next-- I guess next week
16 we'll be each providing reports at that point.
17 MR. WILMOTH: That's fair.
18 Q. (BY MR. WILMOTH) You mentioned that a number
19 of these entities including KBID could not
20 divert water in 2005 or 2006?
21 A. Uh-huh, yes.
22 Q. What was happening in Northwest Kansas at that
23 time? Let me be more specific.
24 A. Okay, good.
25 Q. Were appropriations being fully met?

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1 A. No. You know, in Northwest Kansas, those are
2 smaller tributaries. They are much more
3 intermittent by their nature, always have been,
4 and so surface water diverters sometimes have
5 water and sometimes don't. So that condition
6 was present in 2005 and 2006 in Northwest
7 Kansas.
8 Q. Drought condition or the condition of not
9 having water?
10 A. Well, the condition of having water
11 intermittently is what I was referring to. So,
12 you know, groundwater users, you know, were
13 still able to divert water, although some at a

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- 14 lower rate than at other times in more
15 plentiful water supply.
- 16 Q. Did any of these users in eastern Kansas-- the
17 eastern portion of the basin, did any of these
18 users participate in compensatory programs
19 under state or federal law to your knowledge?
- 20 A. Not to my knowledge.
- 21 Q. Does the State maintain a compensatory program
22 for drought mitigation essentially?
- 23 A. So you're not talking about CREP or EQIP;
24 you're talking about--
- 25 Q. CREP, EQIP, any equivalent program?

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- 1 A. In the Republican Basin?
- 2 Q. Correct.
- 3 A. There's no CREP in the Republican Basin.
4 There--
- 5 Q. If you could just define those acronyms, that
6 would be helpful?
- 7 A. CREP is C-R-E-P, the Conservation Reserve--
- 8 Q. Enhancement--
- 9 A. -- Enhancement Program, thank you. We have a
10 CREP, but it's in the Ark River Basin. There's
11 no CREP in the Republican Basin. The only
12 program of that nature that I'm aware of in the
13 Republican Basin in Kansas is EQIP. And I
14 don't know what that--
- 15 Q. I believe that's the Environmental Quality
16 Improvement Program?
- 17 A. Right, thank you. There is some limited use of

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18 that program in the Prairie Dog Creek for
19 reduction in water use, water consumption.
20 There may be other applications of EQIP
21 elsewhere. That's the only one to my
22 knowledge.
23 Q. There's no preventive planting program; people
24 that can't utilize water can be compensated for
25 that result?

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1 A. Not to my knowledge. Not to my knowledge.
2 Much of the upper part of the Bostwick
3 District-- Kansas Bostwick District, you know,
4 didn't get water in those years. I know there
5 was a program of that nature in Nebraska. I
6 just don't know-- did not hear of one in
7 Kansas.
8 Q. It was stated by counsel for Kansas in the--
9 one of the briefs that KBID was unable to use
10 water in 2006. Does that sound familiar to
11 you?
12 A. Yes.
13 Q. Could you explain the circumstances surrounding
14 that?
15 A. Well, in speaking specifically of the upper
16 district again, the Bostwick District-- Kansas
17 Bostwick District is separated into two
18 portions, the upper district above Lovewell.
19 Its water supply is dependent upon the
20 Republican River itself and releases from
21 Harlan County Reservoir. There was no water

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22 supply available from Harlan County Reservoir
23 in that year and extremely limited surface
24 water, the Superior Canal getting most of that
25 allocation, so there really wasn't enough water

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1 to run the canal to supply water to the upper
2 district in that year.
3 Q. Was the canal fully operational at that time?
4 A. It was capable of being operated, if that's
5 what you're asking.
6 Q. That is what I was asking. And all the
7 laterals to your knowledge?
8 A. They were.
9 Q. Was that also true in 2005?
10 A. You know, I would have to review the records to
11 remember exactly which years and the
12 allocations that were available in each year,
13 but, again, a very limited supply.
14 Q. I want to hand you Exhibit 8.
15 COURT REPORTER: Seven.
16 MR. WILMOTH: Seven, excuse me.
17 (THEREUPON, the court reporter marked
18 Barfield Deposition Exhibit No. 7 for
19 identification.)
20 Q. (BY MR. WILMOTH) I'd ask if you could identify
21 this communication?
22 A. Well, it appears to be a fax that originated
23 from the Kansas Bostwick Irrigation District, I
24 presume. It's actually just a three-page
25 document that doesn't indicate the source, but

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1 it does indicate that the Stockton field office
2 and the Kansas Bostwick Irrigation District had
3 some connection with it.

4 Q. And the Stockton field office, for
5 clarification, is the office run by Mr. Ross?

6 A. That's correct, yes. And it's entitled Above
7 Lovewell Operations 2006 watering Season.

8 Q. And what is the date of this communication?

9 A. July 27, 2006, it would appear.

10 Q. And I call your attention to the third
11 paragraph, latter half. The sentence begins,
12 "As the summer turned out." Could you read
13 that paragraph-- the remainder of that
14 paragraph for the record, please?

15 A. I'm not finding what you're talking about.

16 Q. Sorry. "As the summer turned out."

17 A. "As the summer turned out, it worked out well
18 for all of them. Corn and alfalfa users have
19 benefited greatly from water. Soybean grower's
20 benefits are increasing with the available--
21 with the ability to continue deliveries at this
22 later date. we have utilized every bit of the
23 river and releases we possibly could. Combined
24 with one really good rain and some additional
25 showers, it looks as though we have helped our

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1 irrigators to be in a position for a good
2 harvest this fall."

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- 3 Q. And then there's also the final sentence of
4 this written communication on page 2, if you
5 could read that into the record, please.
- 6 A. "The crops above Lovewell have all received a
7 great benefit from the four inches delivered to
8 the fields and hopefully the rest of the summer
9 will not take away too much of what we have
10 been able to do to this point."
- 11 Q. Does this communication pertain to what I think
12 you called the upper Bostwick portion of the
13 KBID?
- 14 A. It does, at least in part, yes.
- 15 Q. And I thought that--
- 16 A. And maybe in total. I have not read the whole
17 document here.
- 18 Q. Certainly. And if you'd like some time, that's
19 fine. You're more than welcome to take
20 additional time to answer anything and read
21 this. I thought earlier I'd heard you say that
22 the-- in 2006 the upper portion of KBID had a
23 pretty difficult time, and I'm trying to
24 reconcile the contents of this communication,
25 which appears to have come from KBID, with that

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- 1 assessment. Can you explain that?
- 2 A. well, they did receive a limited water supply
3 as this communication does indicate and
4 apparently that supply was helpful. I think
5 you'll, you know, in due course, receive our
6 full analysis as to, you know, the effects on
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7 this particular district of not having the
8 water they should have had. I do recall-- at
9 least, I believe I recall from Kenny that--
10 Q. Kenny--
11 A. Nelson, the manager of the district, who
12 really, I believe, is the source of this, that
13 they were pretty encouraged at one point in the
14 summer, and then later in the summer when the
15 lack of precip and some high temperatures, the
16 soybeans did not come out near as well as he
17 had hoped earlier. So again, I think, you
18 know, in due course we'll-- you'll receive our
19 full analysis as to the effects and benefits.
20 Q. Okay. How was the situation in KBID in 2007?
21 was it comparable to the '05 incident?
22 A. My recollection, it was better. There was, you
23 know, more rains and a better water supply as a
24 result of those rains. It-- my recollection is
25 is that it sort of improved as the year went

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1 on.
2 Q. Is Kansas seeking any remuneration from
3 Nebraska for 2007? I don't mean to put you on
4 the spot. I'm asking the question. I don't
5 know the answer to it.
6 MR. DRAPER: No. Not at this time.
7 A. The current dispute only deals with 2005, 2006,
8 the first water short year test.
9 Q. (BY MR. WILMOTH) If I could, I'd like to
10 return to your December 19th letter, which is

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11 Exhibit 6. With regard to the other water uses
12 aside from KBID that were damaged-- the other
13 water users, excuse me. Can you identify
14 generally the nature of those users?

15 A. Well, Scott Ross, my water commissioner, has a
16 lot better knowledge of the specifics of those
17 people and the-- the administration of the
18 river that occurred and the people and the
19 shortages than I have. I don't have the
20 detailed knowledge of those people.

21 Q. Sure. But Scott Ross would be the person to
22 talk to about that?

23 A. Yes.

24 Q. One of the other things you requested in here
25 was interest and attorney's fees and costs.

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1 And I'm curious about the scale of those fees
2 and costs.

3 A. I don't have that specific knowledge.

4 Q. Any round number idea?

5 A. No.

6 Q. More than a dollar, though, I'm guessing?

7 A. I would guess that.

8 Q. More than a million?

9 A. I don't have a speculation.

10 Q. Okay, fair enough. I'd like to offer you
11 Exhibit 8, which is a document that I'll
12 apologize in advance for not having any
13 context.

14 (THEREUPON, the court reporter marked
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15 Barfield Deposition Exhibit No. 8 for
16 identification.)
17 Q. (BY MR. WILMOTH) This was obtained from box
18 number ten, which was represented to us as a
19 box of your materials.
20 A. Okay.
21 Q. If you'll accept that for face value. Could
22 you please identify this document?
23 A. Well, it's two pages. The first-- Figure 1 is
24 titled Net Nebraska Impact parentheses (pumping
25 minus imports) closed parentheses. And the

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1 second page is Figure 2, Computed Republican
2 River Baseflow Under Three Scenarios colon
3 baseline.
4 Q. So with regard to Figure 1, can you explain
5 what the projected Nebraska net impact under
6 Kansas's proposed remedy represents?
7 A. Yes. And I believe that particular line in
8 this graph would be the same as what's provided
9 in an attachment to the December 19th letter of
10 2007. And it represents the-- the groundwater
11 depletions that would occur in the future under
12 a future scenario that we constructed and
13 described in one of the attachments to this
14 letter under the reduced irrigation that we
15 demanded in the December 19th letter.
16 Q. Does that reduction then include curtailment of
17 groundwater pumping within certain geographic
18 areas?

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- 19 A. Within two and a half miles of the streams and
20 uses after the year 2000, you know, again as
21 described in the December 19th letter.
22 Q. It appears to me - and I infer from this
23 document - that the number 150,000 had some
24 significance to your analysis; is that correct?
25 A. Yeah. One of the attachments to the December

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- 1 19th letter was an analysis by Dale Book that
2 in essence determined the-- the amount of
3 groundwater depletions that Kansas believes was
4 consistent with your allocations during, you
5 know, five-year sort of dry periods.
6 Q. So this is based on the five-year analysis?
7 A. Yes.
8 Q. Five year averaging?
9 A. It's based upon seeking to achieve compliance
10 by the State of Nebraska during five dry years
11 such as we've experienced in the most recent
12 period and earlier.
13 Q. Is it your conclusion that the most groundwater
14 Nebraska can use henceforth is 150,000 acre
15 feet?
16 A. It can use more during wet periods. The
17 difficulty is you can't turn on and turn off
18 groundwater depletions at will. If the State
19 of Nebraska can devise a way to do that, then
20 some other value maybe could be used by the
21 State of Nebraska or devise a method to offset
22 those depletions in some manner. But those not

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23 in view, Nebraska needs to get its use-- its
24 groundwater consumptive use within these
25 parameters if you're going to achieve compact

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1 compliance during the critical periods of time
2 when we need our water.

3 Q. And does that conclusion hold irrespective of
4 what other activity Nebraska may engage in such
5 as surface water retirement?

6 A. well, what the state of-- what we invited in
7 our letter was here's a remedy, here's the
8 remedy that we believe the Court can require,
9 or some hydrologic equivalent, and we invited
10 the State of Nebraska to come up with some
11 other hydrologic equivalent. So--

12 Q. Is it correct to say that you would measure
13 equivalency by virtue of this graph?

14 A. I'm not sure. Again, this graph was an
15 analysis as to what the State needed to do in
16 this context. There may be other ways to get
17 there. You know, the surface water supplies of
18 the basin, are they going to be there in the
19 future? One of the things the analysis shows
20 is that surface water supplies in the future
21 are going to be much less-- even more-- even
22 less reliable than they have been in the most
23 recent period.

24 Q. And what was that based on?

25 A. That-- I'm sorry?

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- 1 Q. The future availability of water supplies in
2 the basin.
- 3 A. Well, in part, Figure 2 is again projections of
4 future baseflows as computed by the groundwater
5 model under different conditions. The baseline
6 scenario described is if Nebraska doesn't make
7 any significant changes but continues to use
8 groundwater as it has to date. It describes
9 the baseflow as computed by the model under
10 those conditions and shows that the historic
11 trend of significantly declining baseflows will
12 continue in the future, and that's a
13 significant piece of the inflows to those
14 projects.
- 15 Q. Figure 2 seems to be essentially the inverse of
16 Figure 1.
- 17 A. Figure 2 are the computed baseflows predicted
18 by the model. Figure 1 are the computed
19 depletions predicted by the model.
- 20 Q. With regard to Figure 2, though, would you not
21 need to make some assumptions about future
22 hydrologic conditions; i.e., rainfall, climate?
- 23 A. Yeah, Figure 2 is a representation of the
24 baseflow component. It does not represent
25 runoff. So it is not the whole story, as you--

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- 1 as I think you're suggesting.
- 2 Q. I'd like to hand you Exhibit No. 9. I should

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3 say what will be marked as Exhibit No. 9.
4 (THEREUPON, the court reporter marked
5 Barfield Deposition Exhibit No. 9 for
6 identification.)
7 Q. (BY MR. WILMOTH) When you've had a moment to
8 look at this, will you please identify this
9 document?
10 A. It is testimony I provided on January 31 of
11 2008 to the Kansas legislature, the House's
12 Agricultural and Natural Resources Committee,
13 related to a bill being considered at that
14 time, a substitute for Senate Bill 89, on the
15 disposition of monies recovered from Republican
16 River compact litigation.
17 Q. Was this bill passed?
18 A. A version of it was passed.
19 Q. Is that version generally consistent with the
20 framework discussed in this testimony?
21 A. Well, in a broad sense. Again, I'd have to
22 review this in more detail as well as the
23 final. There was a lot of attention given this
24 bill and various versions, but in general, the
25 Senate bill was passed and it proscribed if

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1 money was recovered from the State of Nebraska,
2 what would happen to those monies in terms of
3 its disposition. And actually also if money
4 was recovered from Colorado, what its
5 disposition would be.
6 Q. If you look at the third paragraph down, you'll

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7 see reference to three different funds that are
8 underlined. Have those funds been established?

9 A. There is an existing, as it says, Interstate
10 water Litigation Fund. So it does exist and
11 continues to exist. The other funds do not
12 exist, but I think would only be created if and
13 when money is recovered. I do not believe the
14 final litigation includes the Republican River
15 Compact Compliance and Enforcement Fund, to my
16 recollection.

17 Q. The final legislation?

18 A. Right.

19 Q. What about the Water Conservation Projects
20 Fund?

21 A. As I recall the bill, such a fund would be
22 created.

23 Q. So these are authorized; they just haven't been
24 implemented?

25 A. Correct.

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1 Q. Any other funds in that bill that would be
2 created for the benefit of the Republican River
3 Basin or any other basin in Kansas?

4 A. As I recall, the final legislation has a fund
5 for the lower basin that would be created if
6 monies are recovered from the State of Nebraska
7 and a separate fund for the upper basin if
8 monies are recovered from Colorado.

9 Q. And to be clear, that's not a litigation fund;
10 it's a projects fund or--

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- 11 A. That's correct.
- 12 Q. It's different than the litigation fund?
- 13 A. That's right. This parallels the legislation,
- 14 as the testimony indicates, a similar bill that
- 15 was passed on the Arkansas River that provided
- 16 that if monies were recovered from Colorado in
- 17 litigation, that part of the monies would go
- 18 into the basin for water conservation projects
- 19 to better utilize the waters that were received
- 20 in the State of Colorado.
- 21 Q. So the fund that you're referring to in the
- 22 Republican River Basin would be designed to
- 23 improve, for example, conservation activities
- 24 or--
- 25 A. Yeah, the legislation includes a list of the

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- 1 types of projects that could be utilized and a
- 2 process by which the Director of the water
- 3 Office would oversee those expenditures.
- 4 Q. Does it include, for example, new projects?
- 5 A. It could.
- 6 Q. New-- I should be clearer. Water storage or
- 7 use projects?
- 8 A. Yeah. It could include new or expanded
- 9 storage, yes.
- 10 Q. Would that even include expansion of Lovewell,
- 11 for example?
- 12 A. I believe that could be considered.
- 13 Q. And your January 31, 2008 letter, Exhibit 9,
- 14 talks about some percentages of how this money

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15 would be split up. Do you recall how that
16 money currently is split up under the
17 legislation roughly?
18 A. My recollection - and the bill is available -
19 is that the first part of the money would
20 essentially refill the Interstate Water
21 Litigation Fund to twenty million, and the
22 remainder would be split two-thirds to the
23 Projects Fund and then one-third would go to
24 the State water Plan Fund. And a similar sort
25 of split if monies were issued from Colorado.

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1 Q. Are there any other sources of funding for
2 those funds?
3 A. Not to my knowledge.
4 Q. So if no monies are recovered from either
5 Nebraska or Kansas (sic) in this litigation,
6 those funds would either not be established or
7 would go unfunded?
8 A. That's my understanding.
9 Q. Who would administer those funds?
10 A. Again, as it says in the testimony - and I
11 believe this is the final bill - the Director
12 of the Kansas Water Office.
13 Q. But that's not you?
14 A. That's not me.
15 Q. Who is that?
16 A. Tracy Streeter is his name. I do have some
17 role in reviewing and approving the projects,
18 but he ultimately sort of administers.

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- 19 Q. And how does the Kansas Water Office relate to
20 the Division of Water Resources?
21 A. Well, it's a wholly separate agency. It's
22 essentially the water planning agency of our
23 state.
24 Q. So the Kansas Water Office looks at things like
25 how to meet the future demands of an irrigant?

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- 1 A. It oversees an ongoing continuous planning
2 process we call again the Kansas Water Plan, is
3 its primary function.
4 Q. Is the Kansas Water Plan-- strike that. Let me
5 ask this differently. Is the Milford reserved
6 right part of the Kansas Water Plan, for
7 example?
8 A. I don't know explicitly if it's in the water
9 plan.
10 Q. General planning, though, is what we're talking
11 about?
12 A. That's right. They have a Basin Advisory
13 Committee and other entities that they use to
14 look at our water law and policy and help frame
15 it.
16 Q. Could any of this money be used to compensate
17 water users in KBID, for example, who were
18 denied water in '05 and '06?
19 A. I don't think so. I know in the case of the
20 Ark, it-- the money did not and I don't think
21 could go back to individual people that were
22 damaged but went into projects to better

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23 utilize the water. Again, I'm-- that's my
24 understanding on the Ark, and I believe that's
25 the case here, but--

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1 MR. BLANKENAU: Just a clarification.
2 Ark, you're referring to--
3 A. The Arkansas or Arkansas. I often just say Ark
4 to save the debate.
5 Q. (BY MR. WILMOTH) So is your role, then, under
6 the legislation essentially to advise the water
7 Office on how to spend its money under the
8 funds?
9 A. Well, my role would be advisory, as you
10 suggest, working with the Director of the water
11 Office to review projects and to ensure that
12 they meet the statutory requirements. There
13 are specific things that are provided for in
14 the statute, and to make sure that they meet
15 those tests. And if there's prioritization to
16 be done, I assume I would be assisting with
17 that prioritization.
18 Q. Has there been any official scoping of how that
19 money might be spent?
20 A. Not yet.
21 Q. There's no publication out there that
22 suggests--
23 A. No. There is a committee that's just being
24 formed that would start to give some thought to
25 this.

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1 Q. Was there-- I think you said this was a
2 complicated or-- there was a lot of interest in
3 this bill. I can't recall exactly what you
4 said. Was there a lot of interest in this
5 bill?

6 A. There was a lot of interest in this bill.
7 There was particular legislators that had
8 interest in it being formulated in a particular
9 way, and so there was just a number of
10 different alternative versions that were
11 offered. Everybody thought it was a good idea,
12 but exactly what it should look like and-- was
13 subject to some debate.

14 Q. So was there a fair amount of testimony offered
15 on the bill?

16 A. There was a number who offered testimony. I
17 think the part I was just speaking about was
18 more after the testimony was provided,
19 discussion between the legislators of the
20 specific attributes of the bill.

21 Q. But hearings were held on the bill?

22 A. There were hearings.

23 MR. WILMOTH: Okay. Why don't we
24 take five minutes or ten minutes? Is that all
25 right with you all?

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1 MR. DRAPER: Sure.

2 (THEREUPON, a short recess was
3 taken.)

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4 Q. (BY MR. WILMOTH) Mr. Barfield, you identified
5 a number of people early on in the day that
6 work on Republican River matters or have
7 recently worked on Republican River matters for
8 the State of Kansas. My recollection of those
9 individuals was, of course, yourself, Mr. Ross,
10 Mr. Perkins, Mr. Batel?

11 A. Uh-huh.

12 Q. Mr. Pope, Mr. Larson, Mr. Book. There may have
13 been a couple more. Do you have anyone in
14 Kansas responsible for attending activities in
15 Nebraska; for example, NRD meetings?

16 A. Well, Mark Billinger was. He took another job
17 during December.

18 Q. We're familiar with that phenomenon. And what
19 did Mr. Billinger do for--

20 A. He was stationed in our Stockton field office
21 and it was his job to sort of assist with sort
22 of field activities specific to the Republican
23 Basin. As you suggested, part of that was to
24 attend meetings and do field inspections both
25 in Kansas, again helping collect data. We need

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1 to ensure that we're in compliance with our
2 part of Republican River Compact duties. But
3 he also would assist us in monitoring the other
4 states' compliance.

5 Q. Was any material generated by Mr. Billinger in
6 the way of public comment or anything for these
7 meetings he attended?

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- 8 A. No.
- 9 Q. Is anyone currently filling Mr. Billinger's
10 vacated spot?
- 11 A. Not yet.
- 12 Q. Do you intend to fill that spot if you can?
- 13 A. At some point.
- 14 Q. Have you ever attended any NRD meetings in the
15 last five years?
- 16 A. Not to my recollection.
- 17 MR. WILMOTH: For the record, NRD is
18 an acronym for Natural Resources District which
19 we have in the State of Nebraska.
- 20 Q. (BY MR. WILMOTH) Have you had an opportunity
21 to review any of the integrated management
22 plans or IMPs generated by the State of
23 Nebraska at the NRDs?
- 24 A. I've perhaps-- I've given cursory review to one
25 or more of them.

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- 1 Q. In the last few years?
- 2 A. Uh-huh. Yeah, we were obviously discussing
3 them during the RRCA dispute, you know,
4 attempts to resolve the disputes, and at least
5 summaries of them were reviewed and discussed.
- 6 Q. Have you seen the latest draft or the latest
7 versions of the IMPs? These would have been
8 late 2007, early 2008.
- 9 A. I have not personally reviewed them in any
10 depth. I've relied on, I think, Nebraska's
11 characterization and staff characterizations of

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- 12 those for the most part, but I have some
13 general knowledge about their contents. I've
14 reviewed specific pieces of them.
- 15 Q. Does the State of Kansas have any comparable
16 management plans to deal with groundwater,
17 surface water interaction?
- 18 A. We have groundwater management-- a groundwater
19 management district within the basin, Northwest
20 Kansas Groundwater Management District No. 4.
21 For the most part, there is not very strong
22 linkage between the Ogallala portions in Kansas
23 and the stream systems. So that groundwater
24 management district, or GMD, as we call them,
25 doesn't have any sort of integrated

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- 1 groundwater, surface water plan. You know, we
2 closed our basins at least in Northwest Kansas
3 other than the South Fork in 1984, recognizing
4 the need to-- you know, to-- recognizing that
5 these basins were fully appropriated at that
6 time.
- 7 Q. Closed them to new groundwater and surface
8 water appropriations?
- 9 A. Yes, that's correct, within the alluvials.
- 10 Q. But not outside the alluvial area?
- 11 A. Outside they were not closed. Again, we have
12 pretty restrictive policies and have had very
13 restrictive policies in place, but they weren't
14 strictly closed.
- 15 Q. Does that have something to do with the

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16 relationship between the timing of groundwater
17 impacts as you've alluded to earlier?

18 A. Yeah.

19 Q. The futile call, I think, is what you called
20 it?

21 A. Well, at the time the surface water and
22 alluvial system was the focus, and so David
23 Pope, my predecessor, had some analysis done
24 and determined that those basins should be
25 closed. And the management of areas outside

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1 was deemed to be appropriate and didn't close
2 it but chose to just allow the fairly stringent
3 policies for additional use to be in place.

4 Q. And do those policies essentially relate to
5 impacts on senior appropriations? In other
6 words, is your evaluation essentially based on
7 protecting those senior appropriators?

8 A. Well, again, it's sort of a doctrine that
9 guides new development, is to look at, you
10 know, safe yield. And so it allows additional
11 development where an area is not fully
12 developed. But again, in most of western
13 Kansas, it is. And so it essentially allows
14 for limited development within that framework.

15 Q. So this groundwater management district and the
16 more stringent restrictions on additional
17 groundwater development does not apply in the
18 eastern portion of the basin; is that right?

19 A. No. Again, the Lower Republican-- we call
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20 Lower Republican from Hardy to-- to its
21 junction with the Smoky Hill. There is--
22 there's been a quantification in terms of the
23 amount of water that would be available. It's
24 managed under essentially safe yield as well
25 and we're fairly restrictive in terms of

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1 additional new rights in those areas as well.
2 Other than we do allow for-- if they have a
3 right that is off season, there's allowances
4 for off season uses and uses that would allow--
5 you know, divert out of the river during times
6 of plenty and go to storage.

7 Q. What is the safe yield of that area?

8 A. Again, it's proscribed in one of our documents.
9 I don't have that number.

10 Q. Is that a document that we could obtain?

11 A. Uh-huh. It's really within our administrative
12 regulations attached to the Kansas
13 Appropriation Act that would be provided.

14 Q. Okay. With regard to the safe yield
15 calculation, how does that relate to, for
16 example, the future projections in Exhibit 8?

17 A. There is no relationship.

18 Q. No relation?

19 A. I guess--

20 Q. So, for example--

21 A. I mean, safe yield is done-- go ahead.

22 Q. That's all right. How is safe yield done?

23 A. Well, again, it is done based on recharge and
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24 it's not dependent on Nebraska. This is a
25 Nebraska analysis here.

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1 Q. So the safe yield of that portion of the basin
2 is not dependent on Nebraska activities?

3 MR. DRAPER: When you say "portion of
4 the basin," you're talking about the Northwest
5 Kansas section--

6 MR. WILMOTH: No, I'm talking about
7 now the eastern portion, what you called the
8 Lower Republican.

9 A. Yeah, what's allowable-- I believe that's the
10 case. Again, Nebraska activity would impact
11 our ability to use it. You know, dividing--
12 there are mechanisms to allow for additional
13 water beyond safe yield; again, off season, to
14 storage, but the safe yield calculation that's
15 done to sort of establish sort of the base that
16 can be appropriated under a normal
17 appropriations is dependent upon recharge
18 within a certain area.

19 Q. (BY MR. WILMOTH) Okay. And that area starts
20 at the state line; is that correct?

21 A. It's local to the application that's being
22 made.

23 Q. The application of-- for water?

24 A. The new application, yes.

25 Q. Thank you. There seems to be implicit in your

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1 December 19, 2007 letter an understanding of
2 Nebraska's IMPs will not work. Is that a fair
3 assessment?
4 A. The letter doesn't speak to the IMPs. It
5 speaks to Nebraska's violations. It speaks to
6 the action that Kansas believes is necessary to
7 achieve compliance and provides the basis of
8 that remedy that we're requiring of the State
9 of Nebraska. I guess to the extent that the
10 IMPs fall short of that, it does speak to that.
11 Q. Have you formulated an opinion about that
12 issue, whether the IMPs will fall short?
13 A. Obviously we're working on developing those
14 opinions, and they're due a week from today, so
15 I--
16 Q. So this is part of the expert--
17 MR. DRAPER: To the extent it's part
18 of the expert analysis, it will be coming with
19 that.
20 MR. WILMOTH: Okay, fair enough.
21 Q. (BY MR. WILMOTH) I would like to give you
22 Exhibit No. 10, what will be marked as Exhibit
23 No. 10.
24 (THEREUPON, the court reporter marked
25 Barfield Deposition Exhibit No. 10 for

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1 identification.)
2 Q. (BY MR. WILMOTH) And ask you to, if you can,
3 identify this document.

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- 4 A. Well, it's dated September 18, 2007. It's
5 titled Kansas Review of Nebraska's Request For
6 Change in the Accounting Procedures.
- 7 Q. Have you seen this document?
- 8 A. Yes.
- 9 Q. Are you generally familiar with its contents?
- 10 A. Yes.
- 11 Q. And I recognize that some of this may be
12 subject to expert reports and that's a suitable
13 answer, but my question relates really to what
14 a couple of these statements mean. If you look
15 at page 2 of this document, which has got one,
16 two, three, four paragraphs down-- sorry, it's
17 got six paragraphs. Four paragraphs down
18 there's a-- well, I'd like you to read the
19 first sentence of that fourth paragraph.
- 20 A. "The ultimate goal"?
- 21 Q. Correct.
- 22 A. "The ultimate goal of the RRCA Groundwater
23 Model is to provide a measure of what base
24 flows would have been if states had not pumped
25 groundwater or recharged imported water."

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- 1 Q. What does that mean to you? Is that a measure
2 of-- what is that a measure of?
- 3 A. Well, the groundwater model's purpose is to
4 determine groundwater depletions due to a
5 state's pumping and increase due to imported
6 water.
- 7 Q. And I assume there's multiple ways to do that?

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- 8 A. It's the way that was adopted by the compact
9 administration.
10 Q. And how is that done today?
11 A. How is-- how are groundwater depletions
12 determined today?
13 Q. Correct.
14 A. They are done using the adopted groundwater
15 model according to the accounting procedures
16 that the states have agreed to. The
17 groundwater depletions are the difference
18 between a base run of the model with all the
19 pumping in versus runs with each individual
20 state's pumping off and then a fourth run
21 that's done with the imported water off. And
22 the differences between the base run and the
23 no-state-pumping-run are a measure of the
24 depletions due to that state's pumping.
25 Q. And this document references a term called the

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- 1 virgin water supply metric. Could you explain
2 to me what that term means?
3 A. This document-- and I haven't-- I'm generally
4 familiar with it but haven't gone back and
5 reviewed the specific proposal of the State of
6 Nebraska that we're responding to here over the
7 course of the last year and a half or so.
8 State of Nebraska's provided a number of
9 differing critiques and proposals related to
10 the accounting and the modeling. This was
11 responding to a specific one of those. The

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- 12 virgin water supply metric was using, again,
13 the difference in two runs; one run that we
14 would historically use, the base run, and
15 another run that turned everything off, all
16 pumping and recharge at one time. The
17 difference of those two is what was referred to
18 in here as the virgin water supply metric.
- 19 Q. So if I'm understanding that, is it another way
20 to say it that you are essentially turning off
21 all the stresses?
- 22 A. Uh-huh.
- 23 Q. And turning-- and then determining the
24 difference between those stresses on and off
25 and that is essentially the stress of the

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- 1 whole? I'm not sure-- this gets back to the
2 engineer talking to the lawyer and the lawyer
3 feeding it back, so bear with me. Perhaps you
4 could just explain it one more time.
- 5 A. Well, it is an estimate of the stream flows
6 that would have occurred were there no pumping
7 or no imports, the base flows that would have
8 occurred were there no groundwater pumping or
9 imports.
- 10 Q. And so by use of the term metric, typically I
11 associate that with some kind of a measuring
12 device or some kind of tool against which you
13 would value the quality of something. Is that
14 how that's being used? Is the virgin water
15 supply metric designed to be a test to

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- 16 determine whether the Nebraska proposal is
17 legitimate?
- 18 A. In this specific context it was-- it was used
19 or suggested that that Nebraska proposal at
20 that time reforms-- was further from that
21 metric than the currently adopted procedure.
- 22 Q. Than the current plan, okay. So that metric
23 can be viewed as a device against which to
24 measure the quality of any particular proposal?
- 25 A. It was used in this specific context to, I

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- 1 guess, say that the Nebraska proposal at that
2 time was, in our view, not worthy of further
3 consideration. The metric does not provide a
4 way to separate impacts of individual state's
5 impacts or the amount of credits.
- 6 Q. Okay. I believe you indicated that you
7 reviewed this document, Mr. Barfield. Did you
8 participate in creating this document at all
9 other than the obvious review?
- 10 A. Yes.
- 11 Q. So is it safe to say, then, that you're-- I
12 mean, you're pretty involved in the accounting
13 reviews and procedures and outputs and
14 reviewing all that material?
- 15 A. Yes.
- 16 Q. With regard to the accounting issues-- I don't
17 mean that in the biblical sense that we've
18 talked about it in the arbitration, but with
19 regard to the compact account in general, we

20 BARF113T.txt
20 had obtained from one of the boxes the
21 following document which we've marked as
22 Exhibit 11. And it's a-- my very simple
23 question is, this is, as I understand it,
24 essentially the '05 accounting sheet,
25 spreadsheet; is that correct?

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1 A. It says for 2003.
2 Q. By the way, this is just the cover.
3 A. Right. You asked if it was for 2005, and it
4 says for 2003.
5 Q. All right. Very good.
6 A. So it's the 2003 accounting sheet.
7 Q. And was Kansas responsible in 2006 and 2007 for
8 generating this kind of document?
9 A. It's-- as I said before, it is a joint-- it is
10 jointly developed by the states.
11 Q. Who-- who-- my understanding of the process is
12 that a state provides an input or a series of
13 inputs, passes it along to the next state, who
14 does the same, passes it along to a third
15 state, who becomes the keeper of the final
16 spreadsheet; is that correct?
17 A. Yeah, there is an input page to the spreadsheet
18 and each state-- each of the states are
19 responsible for different inputs. Essentially
20 their gauge data, their non federal reservoir
21 evaporation, their surface water uses, their
22 Bureau of Project uses. And so the data that
23 each state-- there is sort of a round-robbin

24 BARF113T.txt
that happens in terms of inputting the
25 spreadsheet. There are Bureau calculations

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1 that need to get input, and I think the State
2 of Nebraska, since most of the projects are
3 there, take some responsibility. We have
4 Kansas Bostwick irrigation calculations that we
5 do. There are evaporation with federal
6 reservoirs that have to be confirmed. And so
7 it does go round-robin. And it-- you know, the
8 chair of the committee, I think, is probably
9 where it sort of lands for finalization. But
10 whenever-- as it goes around, copies to go to
11 everybody so everybody can review it. And
12 everybody is sort of responsible to make sure
13 that whatever is happening to it, everybody can
14 agree to. So--

15 Q. Does the-- is the spreadsheet then presented by
16 the Chair to the RRCA for final approval?

17 A. Yes, on behalf of the committee, that's
18 correct.

19 Q. And so the Chair of the Engineering Committee
20 is what you're referring to?

21 A. Yes.

22 Q. And you don't recall who that was in '06 or
23 '07?

24 A. I don't. I'd have to go back to the notes.

25 Q. I have a couple of documents here to walk

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1 through regarding this issue. And you'll have
2 to bear with us, if you will. These next
3 series of documents are documents that, for the
4 record, Mr. Williams printed, but they are
5 electronic communications with which-- or
6 within which either yourself or a number of
7 individuals from Kansas were included. And
8 you'll see this. You don't necessarily have to
9 accept the authenticity of these documents, but
10 when we get through the Kansas files, I believe
11 we'll find them. This is Exhibit 11?

12 MR. DRAPER: No, this one is 11.

13 MR. WILMOTH: I'm sorry.

14 (THEREUPON, the court reporter marked
15 Barfield Deposition Exhibit Nos. 11 and 12 for
16 identification.)

17 A. So, 12.

18 Q. (BY MR. WILMOTH) 12, thank you. Could you
19 have a look at this electronic communication
20 and identify it for me?

21 A. Well, it is an e-mail from George Austin, who
22 is-- has not been mentioned to date. He was on
23 my staff and retired just over a year ago. But
24 it's an e-mail from George to myself, James
25 Williams, and Megan Sullivan, with copies to

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1 others, with the preliminary accounting for
2 2006.

3 Q. So what-- do you recall what happened next
4 after this e-mail with regard to custody of the
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5 spreadsheet? Did that run the round-robin that
6 you were mentioning earlier?
7 A. Obviously he is transmitting the accounting to
8 others and asking for, you know, the committee
9 to continue work on it to complete it.
10 Q. The-- could you read the third sentence of that
11 e-mail?
12 A. "For instance"?
13 Q. Yes.
14 A. "There were a couple of cells that had wrong
15 addresses in them so Dave corrected them."
16 Q. Does that refer to you?
17 A. Yes.
18 Q. Could you elaborate on the nature of the error
19 and the correction?
20 A. It's not indicated in this e-mail specifically.
21 You know, the accounting spreadsheet was sort
22 of a tool that was under some evolution as time
23 went on. We would find minor problems. As the
24 sort of additional tests of compliance sort of
25 came online in 2003, it was sort of a

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1 stand-alone year. There was no multi-year test
2 to be considered. So there was sort of the--
3 the document sort of evolved and improved over
4 time. So apparently I found some errors.
5 Typically there was a page of the spreadsheet
6 that sort of provided some documentation. So,
7 again, we could look at that and see if that
8 was the case here.

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- 9 Q. would the documentation accompany the
10 spreadsheet when it was sent out?
- 11 A. Right, the first page of the spreadsheet often
12 includes sort of documentations of errors found
13 and changes made and that sort of thing.
- 14 Q. So whenever there's an error found or a change
15 made, that's communicated to everyone?
- 16 A. Should be.
- 17 Q. And everyone is-- reviews that and says we
18 agree or we disagree?
- 19 A. That's right. Nothing can be adopted without
20 unanimity of the committee participants or
21 state's agreement.
- 22 Q. Is it-- what process do you go through to
23 double-check the accuracy and eliminate errors
24 in the spreadsheet?
- 25 A. I don't know that there's a proscribed process.

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- 1 I think we each input the data. we look at the
2 results. If something looks odd, we try and
3 trace through it to figure out why that is.
4 Again, each states do that independently and
5 through that process we come to an accounting
6 that we can agree to.
- 7 Q. I'll give you Exhibit 13. It's a similar
8 situation with the e-mail.
- 9 (THEREUPON, the court reporter marked
10 Barfield Deposition Exhibit No. 13 for
11 identification.)
- 12 Q. (BY MR. WILMOTH) Could you identify this

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13 communication and its general purpose?
14 A. Well, it's an e-mail dated August 10, 2007,
15 from George to several committee members. The
16 subject is Final Accounting for 2006.
17 Q. So in 2007--
18 A. Right.
19 Q. -- Kansas sends the, quote, "final accounting"
20 to the other states for year 2006?
21 A. That's correct.
22 Q. Okay. We have Exhibit 14.
23 (THEREUPON, the court reporter marked
24 Barfield Deposition Exhibit No. 14 for
25 identification.)

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1 Q. (BY MR. WILMOTH) I'm trying to refresh your
2 recollection about what the nature of this
3 error was. Perhaps you could take a look at
4 this electronic communication and see if that
5 refreshes you at all.
6 A. What's your question?
7 Q. Does this help you recall the nature of the
8 error involved? I had asked you earlier
9 about-- if you recalled the nature of the error
10 referenced in the prior e-mail.
11 A. Well, it-- it's an e-mail again from James
12 Williams to George in this case, and it sort of
13 follows the August 16th e-mail of George, but
14 this is dated January 7th of 2008. And it-- it
15 does reference specific cells in specific
16 attachments, so it's actually asking a

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17 question, "Can you take a look at cell C4 on
18 Attachment 6? It seems like it should be
19 referring to this location."

20 Q. You have Exhibit 15.

21 (THEREUPON, the court reporter marked
22 Barfield Deposition Exhibit No. 15 for
23 identification.)

24 Q. (BY MR. WILMOTH) Could you identify this
25 document for me?

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1 A. Okay. It is an e-mail from myself to James
2 Williams and carboning or sending copies to the
3 other states and other representatives of the
4 Engineering Committee responding to some
5 questions of James regarding representation on
6 the committee and other issues.

7 Q. And there's a statement about midway down that
8 starts "Finally". Could you read that?

9 A. "Finally, George forwarded to me your note to
10 him of January 7th on the RRC accounting
11 workbooks. We agree with your assessment that
12 Cell C4 on Attachment 6 should refer to input
13 line 195, not line 257. It was his mistake,"
14 meaning George.

15 Q. Meaning George?

16 A. Yes.

17 Q. And George was responsible then for making the
18 change to the spreadsheet that we referenced
19 earlier?

20 A. What was your question again?

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- 21 Q. Was George Austin or Dave Barfield responsible
22 for making the change to the spreadsheet that
23 we referenced earlier?
24 A. Well, it's my view the committee was
25 responsible. Everybody needed to make sure

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- 1 that happened, that it was corrected.
2 Q. Okay. So when a correction is-- when a
3 discrepancy is located and a correction
4 offered, the process is to alert the other
5 state that the final accounting sheet is not
6 accurate, and then is the accounting sheet
7 adjusted?
8 A. I mean, everybody should be aware of whatever
9 is going onto that spreadsheet, to answer your
10 first question. I'm not sure that-- you know,
11 about your second question. So I don't know
12 how much difference this made in this
13 particular case.
14 Q. Let me ask, was your December 19, 2007 letter
15 based on the original spreadsheet or the
16 corrected spreadsheet?
17 A. I would need to check. My recollection is that
18 it was based on the original.
19 Q. But there's no apparent dispute that this issue
20 should be corrected and whatever the
21 ramification of that is, it is?
22 A. I believe we-- for purposes of the economic
23 analysis that we did subsequently, we used the
24 corrected spreadsheet. So--

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25 Q. And is that a-- that's an analysis that we'll

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1 be seeing next week; is that correct?

2 A. well, I'm speaking about also the one that you
3 were provided of April 18th regarding--

4 Q. of 2008?

5 A. -- your gains.

6 Q. of 2008?

7 A. of 2008, yeah.

8 Q. Exhibit No. 16.

9 (THEREUPON, the court reporter marked
10 Barfield Deposition Exhibit No. 16 for
11 identification.)

12 Q. (BY MR. WILMOTH) Could you identify this
13 document? I'm sorry, the question was, could
14 you identify that document?

15 A. It is an e-mail from myself to Brian Dunnigan,
16 Compact Commissioner for Nebraska and Dick
17 wolfe, Compact Commissioner for Colorado, and
18 sending copies to some of the EC members,
19 Engineering Committee members. The subject is
20 Additional Data-- Additional Kansas Data,
21 transmitting electronic files requested by
22 Nebraska in preparation for one of our meetings
23 on the disputed issues.

24 Q. So when you earlier said that you thought the
25 corrected spreadsheet was utilized in April for

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- 1 responding to Nebraska, is that what this
2 represents?
- 3 A. Well, earlier I was speaking about-- I recall
4 when we did the economic analysis on Nebraska's
5 gains, we had to start with Nebraska's--
6 Nebraska's overuse. We used the revised number
7 for that analysis.
- 8 Q. Okay. That's not this, though?
- 9 A. That's not this.
- 10 Q. So does this represent the uncorrected
11 spreadsheet or the corrected spreadsheet, or
12 can you tell from this document?
- 13 A. I can't tell with certainty.
- 14 Q. So it sounds like these corrections are
15 essentially - how do I say this - ministerial
16 or in-- undisputed; the kind of corrections
17 that are made to the spreadsheet are not
18 typically subject to monstrous dispute?
- 19 A. If we find an error in the accounting
20 spreadsheet, we fix it.
- 21 Q. So, as I understand the spreadsheets-- this is
22 about as well as I understand some of the
23 engineering. But as I understand the
24 spreadsheet, they are essentially-- there are
25 links within these spreadsheets to other data

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- 1 sources? Is that a fair characterization?
- 2 A. Well, to other cells within the spreadsheet for
3 purposes of doing its calculations, right.
- 4 Q. And those cells, if you want to do a particular

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- 5 calculation, do you gather information from
6 these cells and it provides you an output--
7 A. Yes.
8 Q. -- essentially? So at the end of the day,
9 though, it's objectively verifiable where-- how
10 these links need to be connected within the
11 accounting procedures?
12 A. Yes.
13 Q. So if there were any other errors discovered
14 subsequent to this one, that error could be
15 provided and addressed?
16 A. Well, my only hesitation here is I don't know
17 if-- when final numbers are adopted by the
18 administration and then some error is found
19 after that, what effect that might have, I
20 don't know.
21 Q. Barring that legal reality, the Engineering
22 Committee would address the correction?
23 A. Yeah. Come to a consensus. Yes, that should
24 have been done in that way and fix it, yeah.
25 Q. And I guess, depending on the nature of the

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- 1 correction, it could have an impact on CBCU or
2 IWS or base flow analysis or just about
3 anything else the model does, I guess, or the
4 accounting procedures do?
5 A. Yeah. I mean, the spreadsheet is meant to
6 implement the accounting procedures. That is
7 its purpose.
8 Q. So if the spreadsheet is incorrect in some

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9 regard, then the accounting procedures are not
10 being implemented properly?

11 A. Yeah.

12 Q. And if the accounting procedures are not being
13 implemented properly, then, theoretically, a
14 state could be found to be using more or less
15 water than it's entitled to?

16 A. Is there a question there?

17 Q. That is my question. If the spreadsheet were
18 found to contain an inaccuracy, the accounting
19 procedures would not be implemented properly,
20 correct?

21 A. The spreadsheet is meant to implement the
22 accounting procedure and should be consistent
23 with it. I'll agree with that.

24 Q. And if the spreadsheet contained an error, for
25 example, that said one state was using more

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1 water than it's entitled to, based on the
2 error, we would correct the error, I assume?

3 MR. DRAPER: Are you asking him a
4 legal question? After the RRCA has adopted the
5 results, if they then find something in the
6 spreadsheet?

7 MR. WILMOTH: Well, I'll ask it both
8 ways.

9 Q. (BY MR. WILMOTH) I'm not asking you a legal
10 opinion. It's a technical question. What does
11 the committee do?

12 MR. DRAPER: This is prior to action

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- 13 by RRCA?
- 14 Q. (BY MR. WILMOTH) Well, we'll do it prior to--
- 15 let's assume for this question-- assuming for
- 16 this question the RRCA has adopted some set and
- 17 there was an error in the spreadsheet, would we
- 18 correct that error?
- 19 A. Yeah. We haven't got there yet that I know of.
- 20 The states would have to discuss that and
- 21 determine whether to do that or not.
- 22 Q. If the RRCA had not acted and there was an
- 23 error in the spreadsheet, what would we do?
- 24 A. You're saying the Engineering Committee is
- 25 going about its work--

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- 1 Q. Correct.
- 2 A. -- in the course of a year, and in the course
- 3 of that year in assembling data we found that
- 4 cell whatever was pointing in the wrong-- the
- 5 formula in Cell C11 was pointing in the wrong
- 6 place, would the committee fix it? Yes.
- 7 MR. DRAPER: Now, was it implicit in
- 8 your question that all three states'
- 9 engineering representatives agreed that it was
- 10 an error? Is that what you meant?
- 11 A. That was implicit in my answer.
- 12 MR. WILMOTH: Correct. It's an
- 13 objectively verifiable error. That's correct.
- 14 So for the record--
- 15 MR. DRAPER: Well, objectively
- 16 verifiable is different than being agreed to

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17 it.
18 Q. (BY MR. WILMOTH) It's not an error that's in
19 dispute currently or that we would foresee. In
20 other words, for purposes of answering the
21 question, the question is - to be clear for the
22 record - assuming that the RRCA had not
23 approved the accounting spreadsheet, there was
24 an error discovered in the accounting
25 spreadsheet and there was no legal spat about

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1 it, it would be corrected; is that correct?

2 A. Yes.

3 MR. DRAPER: And the engineers all
4 agreed that it needed to be corrected? Is that
5 your question?

6 MR. WILMOTH: No.

7 Q. (BY MR. WILMOTH) Is that your qualified
8 answer? That's fine.

9 A. Well, just give me the question one more time,
10 then, since we're not sure what the question is
11 here.

12 Q. Okay. I-- there is an error in the accounting
13 spreadsheet that no one disputes.

14 A. Okay.

15 Q. No one disputes. The accounting spreadsheet
16 has not been approved by the RRCA. What would
17 you typically do?

18 A. Whoever found the error would report it to the
19 group and, I presume, suggest a fix and the
20 committee would approve it. We've done quite a

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21 bit of that over the course of the years, so--
22 MR. WILMOTH: Why don't we take five
23 minutes, and I think we'll be out of here by
24 3:30.
25 (THEREUPON, a short recess was

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1 taken.)
2 Q. (BY MR. WILMOTH) I just have one final
3 question on that issue, and then Mr. Blankenau
4 looked more closely at some of the documents
5 and just had some document location questions,
6 if you will, generally and maybe a couple of
7 clean-up things. But on this spreadsheet
8 issue, I just want to be clear that when
9 there's a change made to the spreadsheet, that
10 change is documented in this-- in the
11 documentation, and that documentation is sent
12 around with the other-- for the other states to
13 review?
14 A. Yeah. That's the typical process. I won't say
15 we've implemented it perfectly. There may be
16 occasion where it's documented in the e-mail
17 and not the title page, but I think there's
18 been attempts by everybody to be as transparent
19 as possible about these sorts of things.
20 Q. So we would not-- or no one would change the
21 spreadsheet without informing the other states
22 of that change?
23 A. Right. Because in the end, everybody has to be
24 satisfied with it for it to get the committee's

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25 approval, which has to happen before the

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1 commission-- the administration will adopt it.

2 MR. WILMOTH: That's all I have.

3 Don, you have a few?

4 Q. (BY MR. BLANKENAU) I just have a few, and I
5 hate to go back to this, but I'm still not
6 clear on the actual administration of water in
7 Kansas. Could you walk me through how the
8 process works? Say a senior water right holder
9 desires regulation. What happens?

10 A. we have a regulation that-- it has five steps.
11 They can happen very quickly, but, you know,
12 they call us saying, "I'm not getting my
13 water." You're talking about when a junior is
14 impairing a senior?

15 Q. Correct.

16 A. Five-step process. Somebody files a complaint
17 that they're being impaired. An investigation
18 is done, number two. A report is prepared,
19 number three. Then they have to file the
20 request to secure water and then finally we do
21 the administration. That's the procedure.
22 Again, on surface water it can all happen
23 pretty quickly. They call, we go look, we shut
24 the junior off so the senior is satisfied. But
25 that's sort of our process.

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1 Q. And when you shut the junior off, do you issue
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- 2 a written notice to them to shut down?
- 3 A. Yes.
- 4 Q. And then what happens to that written notice
- 5 within this agency? I assume you keep a copy?
- 6 A. It would be in the water right files.
- 7 Q. And then all of that is on WRIS?
- 8 A. I don't-- I don't believe that sort of surface
- 9 water or that administration is all in WRIS.
- 10 Q. So if I wanted to find out, for instance, who
- 11 was regulated to benefit the minimum desirable
- 12 stream flows in some particular year, how would
- 13 I find out that information?
- 14 A. We will, I think, pursuant to your request,
- 15 provide you a copy with the MDS orders related
- 16 to the Republican River. Those orders are in
- 17 the files, each individual file, but we sent it
- 18 out en masse because we administer them all
- 19 together. So we can provide a copy-- I think
- 20 we'll be providing responsive to your request
- 21 of the orders that implemented MDS and then the
- 22 order that ended MDS administration.
- 23 Q. But there's no way that the public could access
- 24 your files to have an independent understanding
- 25 as to who you regulated and for whom?

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- 1 A. I mean, all of our records are open, so they
- 2 could file the request under the Open Records
- 3 Act for the file information and those-- I
- 4 mean, those, I think, could be provided under
- 5 the Open Records Act, if that's what you're

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- 6 asking.
- 7 Q. That's partially it, sure. Perhaps a follow-up
- 8 question, then. There is no report issued by
- 9 your agency which, for instance, would detail a
- 10 water regulation effort of a particular summer?
- 11 A. Correct.
- 12 Q. Let me shift, then, to duties as State
- 13 Engineer. As part of those duties, do you
- 14 prepare or assist in the preparation of the
- 15 agency budget?
- 16 A. Ultimately-- I mean, I'm responsible for the
- 17 Division's budget, which is part of the
- 18 Department's budget. Obviously I have staff
- 19 that do most of the budget work, but I have
- 20 to-- you know, I'm part of that process.
- 21 Q. You're the public face of the Division?
- 22 A. Of the Division certainly, yes.
- 23 Q. And then do you-- are you responsible for
- 24 testifying for the Division's budget to your
- 25 legislature?

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- 1 A. We have part of the Kansas Department of
- 2 Agriculture that's really the Department's
- 3 budget that typically, you know, is presented
- 4 to the legislature. So typically the Secretary
- 5 of Agriculture will address the budget
- 6 committee with respect to the agency budget,
- 7 the Department's budget. But yes, I have to go
- 8 over there and testify related to specifics if
- 9 they're dealing with a specific with the

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10 Division.
11 Q. And when you headed up what was the Interstate
12 Waters Section--
13 A. Interstate Water Issues Program.
14 Q. Program. Did you-- were you responsible for
15 preparing the budget in that role?
16 A. Well, again, I had very definite input. You
17 know, we're provided guidance in terms of sort
18 of what we can ask for. So I was a part of the
19 budget process, but the buck doesn't stop at
20 me.
21 Q. Who is the person most knowledgeable about your
22 budget in the last five years?
23 A. The Interstate Water Issues budget?
24 Q. Correct.
25 A. There's a number of individuals. Again, I

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1 mean, I obviously probably-- because during
2 the-- if the scope is the five years, during
3 most of that period of time I was doing sort of
4 the-- the nuts and bolts work. So probably for
5 much of that period, it's me.
6 Q. And in that process, I assume you are familiar
7 with agency expenditures?
8 A. Yes. I mean, we had an operations manager
9 until very recently, so he did a lot of the
10 spreadsheet crunching and that sort of thing.
11 And again, we're part of an agency, so there
12 are people up in our fiscal group that are part
13 of that work, too.

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- 14 Q. Switching, then, to George Austin, you
15 indicated a little earlier that he had retired
16 approximately a year ago; is that correct?
17 A. Yes.
18 Q. Does he still provide services to your
19 division?
20 A. Yeah, he's a consultant.
21 Q. And he remains under contract?
22 A. He is right now.
23 Q. And is that for purposes of the Republican
24 River dispute?
25 A. For purpose of Republican River, yes.

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- 1 Q. And then you also mentioned-- I believe it was
2 Mr. Billinger?
3 A. Mark Billinger, yes.
4 Q. Is he still under contract?
5 A. He's not.
6 Q. Do you know where he resides now?
7 A. It's in the Stockton area somewhere. I don't
8 know his exact street address. He's actually
9 working for the Department of Wildlife and
10 Parks.
11 Q. The Kansas Department of wildlife and Parks?
12 A. (The witness moves head up and down.)
13 MR. BLANKENAU: We'll note for the
14 record that was an affirmative nod.
15 A. Yes.
16 Q. (BY MR. BLANKENAU) As you, I think, are aware,
17 yesterday we spent the day going through the

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18 documents that were provided pursuant to a
19 document request. We noticed that there were
20 few, if any, documents from the year 2006.
21 There were a few documents. Can you explain
22 that?

23 A. What type of documents were missing?

24 Q. Well, the documents provided pursuant to our
25 request, communications within the agency

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1 related to all of these issues.

2 MR. WILMOTH: If it helps, for the
3 record, and for you, Mr. Barfield, here's an
4 index of the documents that were provided to
5 give you a sense of what we looked at. Those
6 are just boxes. That index was created by the
7 Attorney General's office or the Division.

8 A. For calendar year 2006?

9 Q. (BY MR. BLANKENAU) Calendar year 2006. And if
10 you know-- we'd like to hear your answer, if
11 you don't know why they weren't provided or why
12 they weren't there.

13 A. I don't know. So were there plenty for 2003
14 and 2004 and 2005 and then a few for 2006 and
15 then a lot for 2007 or--

16 Q. I wouldn't say a lot, but there were documents
17 for 2007, some for 2008 and a great deal of
18 them for 2005. 2006 I think there were maybe
19 just a small handful.

20 A. I don't have any explanation.

21 MR. DRAPER: We'll check that.
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22 A. We will check.

23 MR. BLANKENAU: Thank you.

24 Q. (BY MR. BLANKENAU) Tracy Streeter you
25 indicated was the administrator of the Kansas

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1 Water Office; is that correct?

2 A. Director is his title.

3 Q. I'm sorry. And is he the person most
4 knowledgeable about the projects that Kansas is
5 presently contemplating?

6 A. The Water Office is organizing a committee in
7 part because of the legislation. So that
8 effort is just being initiated, you know, so--

9 Q. But for those projects that are presently on
10 the horizon for Kansas, is Mr. Streeter the
11 best person to talk to?

12 A. Well, I guess what I'm trying to say, I'm not
13 sure-- the committee has not been assembled and
14 has not started work yet, so--

15 MR. BLANKENAU: Okay.

16 MR. WILMOTH: Forgive the
17 back-and-forth. As you can see from the index,
18 there were a number of boxes provided from Mr.
19 Barfield, Mr. Pope, and maybe this is a
20 question for the Attorney General's office, but
21 obviously we've discussed a number of other
22 individuals, Mr. Austin, Mr. Billinger, Mr.
23 Ross, Mr. Larson. The question is, are there
24 responsive materials from those individuals
25 that may be forthcoming?

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1 MR. BLANKENAU: I don't know if
2 there's a question on--

3 MR. WILMOTH: It may not be.

4 MR. GRUNEWALD: If you don't mind,
5 I'll just mention that the Stockton boxes
6 represent files that-- from the office that
7 Scott Ross manages and Mark Billinger worked
8 out of. So--

9 MR. WILMOTH: Okay, so their files
10 would be in the Stockton boxes. And are there
11 three more of those that we've not seen yet? I
12 thought there were five of those total.

13 MR. GRUNEWALD: There were five boxes
14 that came up, but not all of those boxes
15 contain responsive materials, because that's as
16 a matter of--

17 MR. WILMOTH: So we're not expecting
18 those?

19 MR. GRUNEWALD: No. So we're done
20 reviewing them and we've produced all of the
21 responsive documents that we noted.

22 MR. WILMOTH: So Austin and Larson,
23 are those available or are those privileged?

24 MR. GRUNEWALD: We're continuing to
25 review for more paper documents, and there may

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1 be some more, but honestly there's probably not

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2 going to be a whole lot of boxes. A lot of
3 that stuff was contained in the DWR files that
4 are-- you saw their Chief Engineer file and
5 that's kind of more of official file keeping,
6 for what it's worth.

7 THE WITNESS: George's documents
8 while he was here should have been produced.

9 MR. BLANKENAU: I don't have any
10 more.

11 MR. WILMOTH: We've got some
12 discovery issues, but that doesn't need to be
13 on record and certainly don't need to take up
14 any more of your time. Thank you very much.

15 MR. DRAPER: Let's take just five
16 minutes and have a private conversation.

17 (THEREUPON, a short recess was
18 taken.)

19 MR. DRAPER: No further questions.

22 _____ (WAIVED) _____
DAVID BAREFIELD

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1 CERTIFICATE

2 STATE OF KANSAS)
3 COUNTY OF SHAWNEE) ss:

4 I, Amy L. Simons, a Certified Shorthand
Reporter, commissioned as such by the Supreme
5 Court of the State of Kansas, and authorized to
take depositions within said State pursuant to
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6 K.S.A. 60-228 and authorized to administer
oaths to witnesses pursuant to K.S.A. 20-913,
7 certify that pursuant to Notice of Deposition,
there came before me in the office of the
8 Kansas Department of Agriculture, Division of
Water Resources, 109 Southwest 9th Street,
9 Second Floor, in the City of Topeka, County of
Shawnee, and State of Kansas, on the 13th day
10 of January, 2009, beginning at 11:00 a.m.,

11 DAVID BARFIELD,

12 who was by me first duly sworn to testify to
the truth, the whole truth, and nothing but the
13 truth concerning the matters in controversy in
this cause, and that the deposition given by
14 him, as herein set forth, was taken by me in
machine shorthand in the presence of said
15 witness, and afterwards reduced to typewriting
under my supervision; that I am not an attorney
16 or relative of either party, or clerk or
stenographer of either party, or otherwise
17 interested in the events of the action or
proceeding.

18 IN TESTIMONY WHEREOF, I have hereunto
19 set my hand and official seal this _____ day
of _____, 2009.
20

21
22 _____
Amy L. Simons
23 CERTIFIED SHORTHAND REPORTER

24 COST: _____
25

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1 January 21, 2009
2

3 Mr. Tom Wilmoth
Husch Blackwell Sanders LLP
4 206 South 13th Street
Suite 1400
5 Lincoln, Nebraska 68508

6 Re: Republican River Compact Arbitration

7 Dear Mr. Wilmoth:

8 The signature on the deposition of David
Barfield taken on the 13th of January, 2009, in
9 the above-entitled case has been waived. I
have certified the transcript, and it is

10 BARF113T.txt
enclosed herewith for your retention and/or
11 appropriate action.

12
13 Amy L. Simons
NORA LYON & ASSOCIATES
14 Encl:
cc: John Draper

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